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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, ETC., ET AL., *Appellants*

v.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, ET AL., *Appellees*

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of New Jersey, entered on February 20, 1967, setting aside an order of the Superior Court, Chancery Division, Mercer County, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

OPINION BELOW

The opinion of the Supreme Court of New Jersey is reported at 227 A.2d 313 (1967) and is set forth in full in Appendix A (pp. 24a-51a). The findings and opinion of the Superior Court, Chancery Division, of Mercer County, New Jersey are unreported but are set forth in full in Appendix A (pp. 1a-24a).

JURISDICTION

This is a suit for declaratory and injunctive relief in which appellants challenged portions of a state statute on the ground that they violate the Federal and State Constitutions. The judgment of the Supreme Court of New Jersey was entered on February 20, 1967. A notice of appeal was filed in the Supreme Court of New Jersey on April 21, 1967.

This Court's jurisdiction to review the decision below on direct appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain such jurisdiction: *Charleston Federal Savings & Loan Ass'n* v. *Alderson*, 324 U.S. 182, 185-6 (1945); *Manhattan Life Insurance Company* v. *Cohen*, 234 U.S. 123, 134 (1914).

STATUTES INVOLVED

Pertinent sections of the New Jersey Professional Planners Licensing Act, L. 1962, c. 109, N.J.S.A. 45:14A-1 *et seq.* are set forth in full in Appendix B hereto.

QUESTION PRESENTED

Where a State legislature has made the accurate factual determination that the profession of city planning requires distinct skills which are not encompassed within the scope of any related profession, may that State, consistent with the Equal Protection and Due Process Clauses of the 14th Amendment, nevertheless

(a) require citizens wishing to practice professional planning (including trained and experienced planners) to demonstrate minimum professional planning competence by taking State planning examinations and obtaining a professional planners license, and (b) at the same time grant automatic licenses, without examination, to members of separate and distinct professions, including engineers, architects, and land surveyors, who do not possess (according to the State's own determinations) minimum professional planning competence?

STATEMENT

Appellants here include the New Jersey Chapter of a professional society known as the American Institute of Planners (AIP) and six individuals who are active practitioners in the profession of city and regional planning in New Jersey (R. 1a-2a).[1] They brought this action for declaratory and injunctive relief in the Superior Court, Chancery Division, of Mercer County, New Jersey, alleging that New Jersey's "Professional Planners Licensing Act" (N.J.S.A. 45:14A-1 *et seq.*) violated the Equal Protection and Due Process Clauses of the 14th Amendment to the Constitution of the United States. After a full evidentiary hearing on the merits the trial court held that the challenged statute did indeed violate the 14th Amendment and declared it

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[1] The printed record which was presented to the Supreme Court of New Jersey consisted of a two-volume "Appendix for Appellants" and a one-volume "Appendix for Respondents." Because the two-volume Appendix for Appellants contains the bulk of the evidence, all references to these two volumes in this Jurisdictional Statement will be indicated by "R. —". References to the "Appendix for Respondents" will be identified by the full title. References to the Appendices to this Jurisdictional Statement will be "App. A" and "App. B."

invalid on that ground. On appeal to the Supreme Court of New Jersey, however, that determination was reversed with one judge dissenting. Appellants now respectfully submit to this Court that the latter decision of the Supreme Court of New Jersey constitutes an erroneous determination of a substantial question involving important Federal Constitutional rights.[1a]

A. The Challenged Statutory Scheme

In the last half century, in response to the enormous problems created by rapidly increasing "urbanization," there has come into being, both in this country and abroad, a profession known generally as "city and regional planning." With the population explosion giving rise to a multitude of urban problems, including growing slum areas, traffic congestion, air and water pollution, inadequate parks and recreational facilities, and imbalance between low income groups and job opportunities, one major response of State and local governments throughout the country has been to develop, under the guidance of the professional planner, a system of comprehensive long-range land-use planning in the form of individual "master plans" developed by the planner for the particular political unit involved (town, city, county, region, or State).

The need for professional expertise in the preparation of such master plans is now widely recognized throughout the United States. Among the 30 to 40 colleges and universities in this country which offer separate planning curricula it is now generally agreed that professional planning competence requires a bach-

[1a] The Federal question was raised in the Complaint (R. 4a-5a) and decided by both the trial court (App. A, p. 17a) and the Supreme Court of New Jersey (*id.* at 32a, 39a, 42a, 49a, 50a).

elor's degree followed by at least two years of graduate training leading to a master's degree or doctorate in planning (R. 445a). It is also widely recognized that following such academic training the planner requires several years of actual planning experience, typically with a governmental planning agency, before he can be permitted to take responsible charge of the preparation of a master plan for an entire community (R. 307a).

New Jersey, the "most urban" of the 50 states,[2] has been one of the leaders in recognizing the need for comprehensive planning under the direction of qualified professional planners. Some years ago the New Jersey Legislature enacted the Municipal Planning Act authorizing each municipality to prepare and adopt a "master plan" ("a composite of one or more mapped or written proposals recommending the physical development of the municipality"):

> "The master plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development and the maintenance of property values previously established. To such end, the master plan shall also include adequate provision for traffic and recreation, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of good civic design and arrangements, the wise and efficient expenditure of public funds, and adequate provision for public utilities and

[2] According to the 1960 Census, 88.6% of New Jersey's population was concentrated in urban centers.

other public requirements." (N.J.S.A. 40:55-1.12)[3]

Having thus defined the type of planning which it wanted, the Legislature of New Jersey in 1962 took steps to insure that the task should be undertaken only by those with sufficient professional qualifications to insure competent performance. In 1962 it enacted the Professional Planners Licensing Act, the first of its kind in the United States, providing that thenceforth no person should practice professional planning in New Jersey unless licensed by the State. The Act stated that,

> "In order to safeguard life, health and property, and promote the public welfare, any person practicing or offering to practice professional planning in this State shall hereafter be required to submit evidence that he is qualified so to practice and shall be licensed as hereinafter provided. After the effective date of this act, it shall be unlawful for any person to practice or to offer to practice professional planning in this State, or to use the title 'professional planner' or any other title, sign, card or device in such manner as to tend to convey the

[3] The statute also provided the following:

"In scope, the master plan may cover proposals for: (a) the use of land and buildings—residential, commercial, industrial, mining, agricultural, park, and other like matters; (b) services—water supply, utilities, sewerage, and other like matters; (c) transportation—streets, parking, public transit, freight facilities, airports, and other like matters; (d) housing—residential standards, slum clearance and redevelopment, and other like matters; (e) conservation—water, forest, soil, flood control, and other like matters; (f) public and semi-public facilities—civic center, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters; (g) the distribution and density of population; (h) other elements of municipal growth and development." (N.J.S.A. 40:55-1.11.)

impression that such person is practicing professional planning or is a professional planner, unless such person is duly licensed under the provisions of this act." (N.J.S.A. 45:14A-1.)

The statute provided for the establishment of a new administrative agency called "the State Board of Professional Planners" (N.J.S.A. 45:14A-2, -4), consisting of "five members who shall be professional planners" (*id.*), and directed that any applicant for license as a professional planner submit to the Board a showing of the following minimum educational and experiential qualifications:

"(1) A graduate degree in professional planning from an accredited college or university in a curriculum offering instruction in such recognized planning subjects as principles of land use planning, history of city planning, planning project design, and planning law and administration, as shall be approved by the board; with a minimum of 3 years experience in the full time practice of professional planning; or

"(2) An undergraduate degree from an accredited college or university in a curriculm offering a major or option comprising a minimum of 21 credit hours in such recognized planning subjects as shall be approved by the board; with a minimum of 4 years experience in the full-time practice of professional planning; or

"(3) Graduation from a secondary school and at least 12 years of professional planning experience acceptable to the board; or

"(4) For a period of 8 years only subsequent to July 1, 1963, a degree in a closely related course of study such as architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science or economics, with a minimum of 18 credit hours in recognized plan-

ning subjects included as part of or in addition to such courses of study in an accredited college or university, with a minimum of 5 years experience in the full-time practice of professional planning." (N.J.S.A. 45:14A-9.)

Thus the New Jersey Legislature provided as a general matter that anyone who wanted to be licensed as a professional planner had to show that he had minimal qualifications: either (a) that he had had formal planning education and some minimal planning experience or (b) in the absence of such formal planning education, that he had had substantial experience in actual professional planning.

The Legislature did not rely merely on a demonstration of education or experience. It also provided generally that anyone wishing to enter the profession had to take and pass a written examination on the following subjects:

"(1) History of urban, rural, and regional planning.

"(2) Fundamental theories, research methods and common basic standards in professional planning.

"(3) Administrative and legal problems, instruments and methods.

"(4) Current planning design and techniques.

"(5) History, principles and requirements of planning and zoning procedures in the State of New Jersey." (N.J.S.A. 45:14A-9.)[4]

[4] Not unnaturally the statute contains a "grandfather" exemption from the examination requirement. Section 19 of the Act provides that persons having specified combinations of training and experience in planning may be granted a license without examination, but by its terms the grandfather clause operated only for one year following the passage of the statute. (N.J.S.A. 45:14A-19.)

Having spelled out the foregoing elaborate prerequisites to an actual demonstration of competence, the State Legislature then reversed its field. To the foregoing structure it appended this exception:

> "The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect of New Jersey." (N.J.S.A. 45:14A-11.)

In other words, after setting up a careful series of safeguards to insure that professional planners licenses should be granted only to those with actual planning competence (acquired through training and experience and confirmed by examination), the statute then allows the issuance of an automatic professional planner's license to anyone who has been licensed as an engineer, land surveyor or architect, *whether or not* he has any specific planning competence. It is this automatic entry provision which appellants here attack as embodying an irrational and invidious discrimination.

B. The Relationships Between the Relevant Professions

It is conceded that there is some relationship between the profession of city planning and various other disciplines. Recognition of such relationships is contained in Section 9(4) of the Professional Planners Licensing Act (quoted at p. 7 above), which characterizes various other professional disciplines as being "closely related" to planning. The other disciplines so identified are architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science, and economics. Land surveying is not included in the list.

The evidence at the trial demonstrated the type of contact which can occur between the professional planner and the members of such "closely related" professions. Such contact can occur either during the planning process itself or at the stage when a completed master plan for a particular community is being "implemented." For example, a professional planner who is in the process of preparing a master plan may from time to time find it useful to obtain data from an engineer or an architect (*e.g.*, data with respect to the feasibility of constructing a particular structure at a particular site; R. 87a)—just as he may find it useful to obtain data from lawyers, sociologists, geographers, and economists (R. 406a). And, of course, when the master plan has been completed and is being put into effect, the services of engineers, architects, and land surveyors will be required in order to construct particular physical facilities. But the fact that *some* relationship exists between the planning profession and the other professions does not mean that all, or even most, of the skills of the planner are encompassed within each of the other professions. On the contrary, as demonstrated below, both the Legislature of New Jersey and the trier of the facts below concluded that the planning profession involves numerous skills which are not possessed by the other three professions and that planning is therefore a completely separate and distinct profession from the other three.

1. *Planning vs. Engineering.* The New Jersey statute which sets out the requirements for obtaining an engineering license defines a "professional engineer" as "a person who by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical ex-

perience, is qualified to practice professional engineering. . . ." (N.J.S.A. 45:8-28). In order to obtain a professional engineer's license the applicant need not have attended school or college; he simply needs (a) to demonstrate that he has had substantial engineering experience[6] and (b) to pass a three-part examination covering the following:

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[6] The following are the precise qualifications:

"a. Graduation from an approved course in engineering of 4 years or more in a school or college approved by the board as of satisfactory standing; a specific record of an additional 4 years or more of active practice in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to be placed in responsible charge of such work; and successfully passing a written or written and oral examination; or

"b. Successfully passing a written, or written and oral examination designed to show knowledge and skill approximating that attained through graduation from an approved 4-year engineering course; and a specific record of 8 years or more of active practice in engineering work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of such work; or

"c. A specific record of 15 years or more of lawful practice in professional engineering work of a character satisfactory to the board and indicating that the applicant is qualified to design or supervise construction of engineering works and provided applicant is not less than 35 years of age; or

"d. A certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration may, in the discretion of the board, be accepted as minimum evidence satisfactory to the board that the applicant is qualified for license as a professional engineer; or

"e. A certificate of qualification of registration, issued by any State or territory or possession of the United States, or of any country, may, in the discretion of the board, be accepted as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer; provided, requirements for license by issuing agency are at least comparable to those of the board. (N.J.S.A. 45:8-34).

"Part I—Basic engineering sciences—This examination is intended to cover the practical application of the basic engineering sciences, such as hydraulics, thermodynamics, chemistry and electricity.

"Part II—Structural design—This examination is intended to establish the applicant's competency to plan, structurally design and supervise the construction of buildings and similar structures.

"Part III—Specialized training of engineers—This examination is intended to cover the more advanced and specialized professional training and experience of engineers in their chosen field of engineering." (N.J.S.A. 45:8-35.)

These requirements should be contrasted with the skills required of the professional planner under the New Jersey planning statutes previously discussed. Under New Jersey law the professional planner must be competent to deal with problems involving (among other things) land use, public services, transportation, housing (including problems of residential standards, slum clearance and redevelopment), conservation, education, recreation, population distribution and density, public finance, public administration, law and zoning (see pp. 5-7 *supra*). As determined by the New Jersey Legislature itself, none of these planning skills are required to obtain a professional engineer's license.

The legislative recognition of the separateness of planning and engineering is also embedded in the Professional Planners Licensing Act. To begin with, Section 2 of the Act explicitly provides as follows:

"The work of the professional planner shall not include or supersede any of the duties of an at-

> torney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey." (N.J.S.A. 45:14A-2.)

Secondly, in terms of educational background, the Act characterizes academic training in "engineering" as being "closely related" to training in city planning (N.J.S.A. 45:14A-9), but the very same section of the statute specifically provides that, if a person with academic training in engineering wishes to become a professional planner, additional academic work in planning itself and "five years' experience in the full-time practice of professional planning" will be necessary in order to give him the requisite planning skills. (*Id.*) Finally, and most importantly, at the time the statute was passed, it had appended to it a statement which said in part as follows:

> "Planning is a distinct, separate profession, which requires specialized training. It is not a branch of engineering, architecture or any other profession." (App. A, p. 13a).

The foregoing statement constitutes the only available legislative history with respect to this statute. (*Id.*) The statement, taken together with the statutory provisions themselves, in effect amounts to a legislative finding that engineering skills are not equivalent to planning skills.

The foregoing conclusions of the Legislature were confirmed at the trial. Appellants called a series of distinguished expert witnesses who had an intimate acquaintance with the relationship between the planning and the engineering professions and who testified unequivocally that engineering competence is not equivalent to planning competence (R. 72a, 201a, 304a, 330a,

458a). Moreover, appellees called several prominent representatives of the engineering profession, and they too agreed that engineering competence is not equivalent to planning competence.[4] On this basis the trial court explicitly found—in a finding which was not disputed by the Supreme Court of New Jersey—"that professional city planning is a separate and distinct profession and differs from that of professional engineering, architecture and land surveying." (App. A, p. 13a).

In concluding that it is rational to grant an automatic license to a professional engineer without any showing that he possesses the "separate and distinct" skills of the planner, the Supreme Court of New Jersey purported to rely on three propositions. First, the court stated flatly as follows:

> "A permissible inference from the record is that the lawmakers were aware that over the years persons who were qualified and licensed by the State in other disciplines, such as engineering, architecture and to a lesser extent land surveying, had been preparing such master plans." (App. A., p. 43a).

There are several difficulties with this proposition. First, there is no legislative history or other "record"

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[4] For example, John G. Reuter, a professional engineer and land surveyor called as an expert witness by the appellees, testified as follows:

"Q. And in your opinion would a professional engineer holding an engineering degree be competent to prepare a master plan in the State of New Jersey?

"A. Well, not per se. I mean he would need [planning] experience. There is no question about this. Just because he is a licensed engineer doesn't say he is qualified to draw a master plan." (R. 393a.)

showing any such "awareness" on the part of "the lawmakers." Secondly, the evidentiary record at the trial conclusively refutes the notion that engineers (and architects and land surveyors) have been preparing master plans. The evidence revealed not a single instance of an engineer (or architect or land surveyor) having prepared a master plan without the help of a professional planner, and there was abundant evidence that in fact responsible planning jobs in this country are *not* being undertaken and performed by persons whose only training and experience has been in engineering.[1] And finally, even if it were true that *some* engineers have been preparing master plans without benefit of training or experience in planning, it certainly does not follow that *all* licensed engineers may be considered to have the requisite skills to engage in professional planning. On the contrary, the trial court found that the evidence was "overwhelming that there exists a great number of engineers who are not qualified" to prepare a master plan (App. A., p. 15a).

The second factual proposition advanced by the New Jersey Supreme Court was as follows:

> "It is worthy of note . . . that the current curriculum catalog for the engineering course at Newark College of Engineering requires a course in 'Elements of Industrial Growth'—a study of 'social, economic, cultural, and political forces,' and provides electives in planning subjects. The civil engineering curriculum at Rutgers, The State University, requires a course in 'Development of

[1] See the uncontradicted testimony of Mr. Dennis O'Harrow, an expert on employment in the city planning field. He made clear that planning jobs are not being filled by engineers or members of other "related" professions (R. 196a).

> Western Civilization' and at least 12 credit hours in 'Humanities and Social Studies'." (App. A., p. 44a).

Since neither of the specified academic curricula are in the record, appellants cannot now comment on the content of the identified courses except to point out that the former Chairman of the Department of City and Regional Planning at Rutgers—who also happended to be a licensed professional engineer—testified very clearly that the engineering curriculum at Rugters (including specifically the course in "Development of Western Civilization", which is "essentially a background course") does *not* give rise to the skills required of the professional planner in New Jersey or anywhere else (R. 377a). His judgment, moreover, was completely consistent with that of the faculties of the leading universities in this country, which have carefully differentiated between their engineering and planning curricula, establishing separate departments and separate courses of study (R. 445a). Furthermore, the students themselves make the same distinction. For example, at the Massachusetts Institute of Technology in 1965 there were 3,000 candidates for the engineering degree—substantially all of whom would presumably be able to qualify for a professional engineer's license in New Jersey—and only five out of those 3,000 students took courses in MIT's Department of City and Regional Planning (R. 442a). Engineering training in America's leading universities simply does not produce professional planners.

Finally, the New Jersey Supreme Court referred to the asserted fact that "historically"—meaning long before the advent of planning as we know it today—some of the persons who first attempted to prepare

comprehensive plans for particular communities were engineers by background.[8] (Others were botanists, lawyers, and landscape architects; R. 61a, 64a, 65a). Whether fledgling professional activities in the 18th and 19th centuries, long before the development of modern planning, can be used to justify legislation which causes invidious discrimination under 20th century conditions is clearly open to question.

2. *Planning vs. Architecture.* Just as the New Jersey Legislature has recognized the factual distinctions between planners and engineers, it has recognized comparable distinctions between planners and architects. To begin with, the State Legislature has directed that every applicant for an architectural license must take a specialized professional examination covering the following seven subjects:

> "... part I, building design; part II, site planning; part III, history and theory of architecture; part IV, building construction; part V, structural design; part VI, professional administration; part VII, building equipment." (N.J.S.A. 45:3-5)

It will be seen that there is no overlap between the foregoing subjects and the matters with which the professional planner must be concerned under the law of New Jersey (see pp. 5-8 *supra*).

Again, the statement which accompanied the Professional Planners Licensing Act declared that "planning is a distinct, separate profession, which requires specialized training" and that planning "is not a branch of ... architecture (App. A., p. 13a). Similarly, in the

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[8] For example, Major L'Enfant, who laid out the famous "cartwheel" design for the City of Washington, D. C., was a military engineer by background (R. 64a).

Act itself the Legislature provided that "the work of the profesional planner shall not include or supersede any of the duties of . . . . [a] registered architect" (N.J.S.A. 45:14A-2), and if a person with academic training in architecture wishes to become a professional planner, he must first show that he has had academic training in planning as well *and* "five years' experience in the full-time practice of professional planning" (N.J.S.A. 45:14A-9). Thus the Legislature itself has found as a fact that architectural skills are not equivalent to planning skills.

With respect to architecture, too, the legislative findings of separateness were confirmed at the trial. The appellants brought forward overwhelming proof that competence in architecture is not equivalent to competence in planning (R. 72a, 195a, 304a, 380a, 452a), and the *only* professional architect called by the appellees testified to the same effect. With respect to the question whether a registered architect is qualified, solely by reason of his architectural training and experience, to prepare a comprehensive master plan, the witness stated as follows:

> ". . . I don't think I could say that [such] a person is automatically competent to do a total comprehensive plan as covered by the statute. Relatively few architects are experienced enough in this field to wish to undertake such a responsibility. There are some that do, but they represent a relatively small portion of the profession." (R. 574a-575a.)

On the basis of such undisputed evidence the trial court found—again without contradiction by the Supreme Court of New Jersey—that "professional city planning is a separate and distinct profession and

differs from that of . . . architecture . . ." (App. A., p. 13a).

Again the New Jersey Supreme Court attempted a multiple answer to the foregoing legislatively and judicially determined facts. First, contrary to the record evidence (see p. 15 *supra*), the State Supreme Court simply asserted that *some* registered architects have prepared master plans in the past. Second, the court "noted that the current architecture curriculum of Princeton University includes a course in 'City Planning' " and that "[a]t Massachusetts Institute of Technology the curriculum in architecture contains courses in 'City Planning' and 'Urban Social Structure & Process.' " (App. A, pp. 44a-45a). In reply appellants note that, although the Princeton curriculum is not a matter of record, we are advised that Princeton's "City Planning" course is an elective "survey course" which is not taken by all students and which does not even purport to provide professional competence in planning. And with respect to the implication that MIT's architectural curriculum provides expertise in professional planning, the explicit testimony by the head of MIT's Department of City and Regional Planning was squarely to the contrary (R. 443a, 452a, 453a).

3. *Planning vs. Land Surveying.* According to the law of New Jersey, "land surveying" is defined as follows:

> "[the] surveying of areas for their correct determination and description and for conveyancing, and for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof, and such topographical survey and land development as is incidental to the land survey." (N.J.S.A. 48:8-28.)

In other words, a land surveyor is a man with a transit who establishes metes, bounds, and topography.

In order to obtain a license as a land surveyor in New Jersey, the applicant need have no academic training of any kind. Indeed, he does not even need to take an examination in land surveying; he need only show that he has had actual experience "in land surveying work" (N.J.S.A. 45: 8-35(2)(c)). Both the Legislature and the trial court made the usual findings that land surveying is a profession which is separate and distinct from city planning and which involves entirely different skills (see pp. 13-14 *supra*).

Moreover, throughout this litigation the role of the land surveyor has remained an enigma. At no point in this case has anyone ever suggested a justification for the automatic licensing of land surveyors as professional city planners. The appellants at the trial came forward with substantial expert testimony to the effect that land surveyors are not competent to be in responsible charge of preparing master plans (R. 75a-76a, 305a, 381a, 453a), and no one at the trial disputed that conclusion. No land surveyor testified; no evidence was offered to show any coincidence between the skills of the land surveyor and the planner; and the Supreme Court of New Jersey itself offered no justification for treating land surveyors as city planners. The court did say that "over the years persons who were qualified and licensed by the state in other disciplines, such as engineering, architecture and *to a lesser extent land surveying*, had been preparing such master plans" (App. A, p. 43a; emphasis supplied), but that proposition—which is refuted by evidence in the record (see p. 15 *supra*)—is all that the court said on the subject.

C. The Impact of the Statute

The record contains a study prepared by the appellee New Jersey State Board of Professional Planners with respect to the applications for planners' licenses filed in the first three years after the passage of the Act.* The study shows that in that period 555 persons applied for professional planners licenses. Of these applicants 254 or 46 per cent were making application on the basis of actual planning qualifications, but the remaining 301 applicants or 54 per cent of the total were engineers, architects, and land surveyors seeking automatic planners licenses without any showing of competence. Furthermore, to the extent that the applications themselves reveal the backgrounds of the persons applying for such automatic licenses, it appears that the vast majority of such applicants for automatic licenses had absolutely no training or experience in professional planning.

In fact, the 301 members of the favored professions who actually applied for licenses represent only a minute portion of the membership of these professions in New Jersey. The record indicates that in 1965 there were over 9,000 licensed engineers in New Jersey, of whom approximately 35 per cent were mechanical engineers, 29 per cent were civil engineers, 25 per cent were electrical engineers, 10 per cent were chemical engineers, and the balance were mining, ceramic and agricultural engineers (Appendix for Respondents, pp. 4a-10a). In addition, there were approximately 2,500 registered architects and almost 1,000 licensed land survey-

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* The Clerk of the court below made two certifications of record, one on April 27, 1967, and the other on June 15, 1967. The study referred to in the text is included in the second certification (June 15) as "Exhibit P-15".

ors (*id.* at 1a, 46a). Thus there are approximately 12,000 licensed members of the favored professions who are entitled to automatic professional planners licenses under the challenged statute.

Under the law of New Jersey, no member of one of the three preferred professions—engineering, architecture and land surveying—is automatically permitted to practice in one of the other two preferred professions. In order for a licensed engineer to practice architecture in New Jersey, he must pass an architectural examination and demonstrate his competence in the "separate and distinct" architectural field. (N.J.S.A. 45: 3-5.1.) Similarly, if an architect wishes to practice professional engineering, he must take the engineering examination like anybody else (N.J.S.A. 45: 8-35). And yet, under the statute challenged here, every one of the thousands of licensed engineers, architects and land surveyors in the State of New Jersey is automatically entitled to obtain a professional planners license without examination, while the State's professional planners are forbidden to practice their calling until they have demonstrated their qualifications and passed a professional planning examination.

THE QUESTIONS ARE SUBSTANTIAL

With the emergence of city planning as a recognized discipline whose professional integrity is important to the entire community, it was perhaps inevitable that sooner or later one of the more urbanized states, beset by all the enormous problems which urbanization involves, would undertake for the first time to require professional planning licensing for the protection of the public. As it happens, New Jersey was the first such state, and the fate of the New Jersey statute in the

courts is undoubtedly being closely watched across the country. Other states will surely look to the New Jersey precedent to see what may or may not be done in the regulatory field with respect to the new and important planning profession. For these reasons the question presented on this appeal is of genuine national significance.

The New Jersey statute permits every licensed engineer, architect, and land surveyor to obtain a professional planners license without having to scale any of the educational, experiential, or examination hurdles which are placed before all other citizens in order to keep out of the planning profession those who lack professional planning qualifications. Since this exemption for a favored class bears no reasonable relation to the purpose of the legislation, the issues presented on this appeal are similar to those involved in *Morey* v. *Doud*, 354 U.S. 457 (1957).

In the exercise of its broad police powers a state may, of course, draw reasonable lines between those who seek licenses to pursue a particular occupation. ". . . [T]he Equal Protection Clause does not require that every state regulatory statute apply to all in the same business. . . ." *Id.* at 465. Furthermore, in assessing a claim of unconstitutionality directed at a licensing statute for lack of a rational basis, the Federal courts will give to the state the benefit of every doubt. *Williamson* v. *Lee Optical of Okla.*, 348 U.S. 483 (1955). The latitude thus afforded the states is admittedly broad; it certainly encompasses the grant of special exemptions from licensing.

However, this does not mean, even as a practical matter, that the states operate at large in the licensing

field. The police powers in the area are not unlimited. ". . . [A] statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." *Morey* v. *Doud, supra* at 465. Further, "[d]iscriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." *Louisville Gas & E. Co.* v. *Coleman*, 277 U.S. 32, 37-38 (1928). The constitutional test is simply whether the legislation may be said to have a rational basis. *Williamson* v. *Lee Optical Co., supra*, at 491. No such rational basis exists here.

This case is unusual in several respects. First, because the State Legislature itself determined the existence of clear distinctions between the different classes of citizens involved, the invidious discrimination brought about by the statute appears on the face of the legislation itself. Moreover, the irrationality of the legislative approach is made evident by the various strange inconsistencies and anomalies which emerge from the statutory scheme. The opinion of the Supreme Court of New Jersey simply ignored these aspects of the legislation.

Secondly, the case is unusual because of the remarkable rationale advanced by the court below in its attempt to square the legislation with constitutional requirements. The rationale starts from a "factual" premise which is, in fact, erroneous. But, more importantly, even if the premise is accepted as valid, the asserted conclusion of constitutionality simply does not follow. Specifically, the asserted justification for the automatic licensing of the preferred professions is that, assuming that a *few* members of those professions possess professional planning competence, it follows that most if not all such members possess such

competence. Of course it does not so follow. By failing to recognize a difference between the allegedly qualified "few" and the admittedly unqualified "many," the State Supreme Court reached a demonstrably erroneous conclusion on an important question of Federal constitutional law.

I. The Invidious Discrimination Effected by the Challenged Statute, and the Irrationality of the Legislative Scheme, Appear on the Face of the Statutes Involved.

At the outset it should be noted that in this case, unlike the situation in *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 252-53 (1964), there is no substantial legislative history which could be thought to provide a rational basis for the automatic licensing privileges conferred upon the preferred professions. Although the New Jersey Supreme Court indulged in a number of assumptions as to what "the lawmakers" might have had in mind when they passed the statute (see p. 14, *supra*), in fact there were no committee hearings, committee reports, or floor debates to which the court could refer. In fact, the only legislative document cited by either of the state courts contains the flat statement that city planning is a profession "separate and distinct" from the professions of engineering, architecture and land surveying (see p. 13 *supra*). The state trial court emphasized this legislative document in concluding that the statute violated the Federal Constitution, but the Supreme Court of New Jersey gave it no weight whatever.

As demonstrated earlier, moreover, the statutory provisions themselves reflect the same ultimate finding—that the skills of the engineer, the architect, and the land surveyor do not coincide with the skills of the

professional planner. In fact, the New Jersey Legislature determined, and the record and the trial court have confirmed, that professional planning involves a broad spectrum of related but varied skills. It is not enough, for example, that the planner be knowledgeable in the area of "residential standards, slum clearance and re-development" or that he be familiar with the "history, principles and requirements of planning and zoning procedures" or that he understand the workings of "civic centers, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters"; he must be knowledgeable in all of these fields and many others as well (see pp. 5-8 *supra*).

Conversely, the field of expertise encompassed within each of the three favored professions is relatively narrow. As shown by the determinations made by the New Jersey State Legislature and the trial court, the engineer typically must master "the practical application of the basic engineering sciences" so as to enable him "to plan, structurally design, and supervise the construction of buildings and similar structures" (see p. 12 *supra*); the architect typically designs buildings (see p. 17 *supra*); and the land surveyor determines metes and bounds and the topography within them (see p. 19 *supra*). None of these professional disciplines requires knowledge or competence in (for example) the sociological, economic, and governmental areas in which the planner does so much of his work.[10]

[10] In its effort to avoid these legislatively-recognized realities, the New Jersey Supreme Court pointed out that, in defining the functions of the three favored professions, the New Jersey statutes used such phrases as "planning," "site planning," and "land development" (App. A., pp. 44a-45a). When each such phrase is read in context, however, it is apparent that the quoted phrases do

The distinction between the planner's skills and those of the other professions was perhaps most clearly recognized by the New Jersey Legislature in the interim licensing procedure under the Professional Planners Licensing Act. As noted above, Section 9 of the Act provides, as a special dispensation, that for a period of eight years from enactment of the Act a person who holds a degree in engineering or architecture (or in one of eight other specified fields) may qualify for a professional planner's license *if* he has also had specified academic training in planning and "a minimum of five years' experience in the full-time practice of professional planning" (N.J.S.A. 45:14A-9).[11] Here is clear recognition that neither engineering competence nor architectural competence is planning competence; if an applicant's only skills lie in the field of engineering or architecture, he must acquire planning skills as well before he is qualified even to take the planning examination for a professional planner's license. And yet under Section 11 of the same statute a person who has only engineering skills (or architectural skills or land surveying skills) is not only auto-

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not relate, even remotely, to the preparation of a master plan for an entire community. With respect to engineering the word "planning" refers only to the "planning of the construction" of an "engineering or industrial project" (N.J.S.A. 45:8-28(b)); with respect to architecture the phrase "site planning" refers only to the physical arrangement of objects on a "site" (N.J.S.A. 45:3-5); and with respect to land surveying the reference to "land development" relates only to the establishment of land boundaries and topographical lines "incidental to [a] land survey" (N.J.S.A. 45:8-28(e)).

[11] The same interim privilege is granted to persons with academic training in the following "closely related courses of study": architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science, and economics (*id.*).

matically qualified for a license but can get one without taking any examination in the planning discipline.

The irrationality of allowing a person who has only the relatively specialized skills of one of the three favored professions to undertake all of the multiple functions of the planner is sharply emphasized by the fact that under the New Jersey statutes no member of one of the three favored professions is automatically allowed to practice in one of the other favored professions. Thus under New Jersey law an engineer is treated as being unqualified to practice architecture; an architect is not qualified to practice engineering; and a land surveyor is not qualified to practice either of the other professions (see p. 22 *supra*). Assuming for the moment, then, that city planning involves some "engineering elements"—thus providing the so-called "overlap" upon which the defenders of the statute so heavily rely—it is clear that the architect and the land surveyor are not considered qualified to cope with the alleged "engineering elements" of planning. Similarly, the engineer is not considered qualified to deal with any "architectural" and "land surveying elements" of planning, and the land surveyor is not considered qualified to deal with either the "engineering" or the "architectural elements" of the planning profession. In short, even if we assume that each of the three favored professions "overlaps" the spectrum of skills involved in the planning discipline, it is clear that each of the three overlaps the spectrum at a different point—and yet the automatic entry provision treats all three favored professions as having precisely equivalent competence in the planning field. Indeed, in defiance of the realities recognized by the Legislature and the trial court, every member of the three favored

professions is treated as though he enjoyed total competence in every one of the multiple areas included within the total planning spectrum.

In practical application the automatic entry provision gives rise to a tangle of contradictory and irrational results. Statutory inconsistencies do not in themselves constitute constitutional deficiencies, but in this case the mind boggles at the anomalies implicit in the statutory scheme. For example:

—A professional planner's license may automatically issue to an electrical engineer who obtained his training and his engineering license 30 years ago, without regard to the type of engineering which he has practiced (*e.g.*, repairing electrical generators) or even whether he has ever practiced his profession at all. Having received his automatic license, such a man is then legally entitled to hold himself as a professional planner and to take on the responsibility of preparing a master plan for a major New Jersey city. But a man who has a doctorate in planning from M.I.T. and 20 years of active experience in the preparation of major master plans is prohibited from continuing to practice his profession (on pain of criminal penalty) unless he presents his qualifications to the State Board and takes and passes an examination.

—An individual who *has never been to school* and who has never passed any examination of any kind, but who has spent 15 years "in land surveying work" (*e.g.*, sighting through a transit on construction jobs), may obtain a license as a land surveyor and thus may automatically obtain a professional planner's license so that he may thenceforth be in responsible charge of preparing master plans for entire communities. On

the other hand, a man who has graduated from a secondary school and had 10 years of professional planning experience is *ineligible* to take the examination for a professional planners license or to obtain such a license. Indeed, even a man with a doctorate in professional planning and two years of experience in the full-time practice of professional planning may not take the examination or obtain a license.

—Without taking any additional professional examination, an agricultural engineer can automatically become a professional city planner, and a land surveyor can automatically become a professional city planner, but an engineer cannot become a surveyor, and a professional city planner cannot become either an engineer or a land surveyor.

The New Jersey Supreme Court paid no heed to these glaring anomalies in New Jersey's licensing scheme. And while, as we have noted, inconsistencies are not dispositive in and of themselves, here they are of such magnitude as to overcome any presumption of rationality which might otherwise attach to state legislative action. At the very least the statutory anomalies are sufficiently bizarre to call for plenary review of the decision below.

II. It Was Plain Error for the New Jersey Supreme Court to Ignore the Trial Court's Findings of Invidious Discrimination and to Assume That, Because a Few Members of the Preferred Groups Were Supposedly Qualified to be Professional Planners, All Members Are So Qualified and May Thus Constitutionally Be Granted Privileges Denied to Competent Planners.

Working from largely undisputed evidentiary facts with respect to the education and function of the various professional groups involved, the trial court below made explicit findings that the planning profession is "separate and distinct" from the other professions and that an engineer, architect, or land surveyor whose training and experience is entirely within his particular field is not qualified as a professional planner (App. A, pp. 13a, 15a). In making these specific findings the trial court took into account all of the arguments which have been advanced in favor of the automatic entry provision. For example, the court recognized that "historically" some of the persons who engaged in the earliest forms of city planning had been engineers and architects by background (*id.* at 15a). It also recognized the possibility of some "overlap" between the favored professions and the distinct profession of city planning (*id.* at 16a). And finally the trial court acknowledged that *some* members of the three favored professions may well have the planning competence to prepare a master plan (*id.* at 15a).

But the trial court also recognized the essential fact, which it found established by "overwhelming"

evidence, that *many* members of the distinct professions of engineering, architecture, and land surveying are *not* qualified to practice as professional planners (*id.*). Concluding that it is invidiously discriminatory to allow the "many" unqualified representatives of the favored professions to obtain automatic professional planners licenses, and at the same time to prohibit professional planners generally from practicing their profession without taking professional examinations, the trial court held that there was no rational basis for the automatic entry provision and that it thus violated the Equal Protection and Due Process Clauses of the 14th Amendment of the Federal Constitution (*id.* at 17a).

The Supreme Court of New Jersey, however, took a far more casual approach. It paid no attention to the statutory scheme which so clearly recognizes the distinctions between the several professions, and it failed to come to grips with the "overwhelming" evidence upon which the trial court based its findings of fact. Instead of dealing with those findings and attempting to show that they erred, the court below simply ignored them, even though those very findings "preclude the assumption that [the statute] rests upon some rational basis." *United States* v. *Carolene Products*, 304 U.S. 144, 152 (1938).

Moreover, the fragmentary efforts made by the New Jersey Supreme Court to deal with the factual relationships between the professions were really quite extraordinary. For example, as noted above, the court thought that a constitutional justification for the automatic entry provision could be found in the fact that Rutgers, the state university of New Jersey, requires

its civil engineering students to take a "cultural background" course entitled "Development of Western Civilization" (App. A, p. 44a; R. 377a). A survey course of that kind is admittedly a broadening educational experience. But a heightened awareness of general civilized values in the western world is hardly the equivalent of professional training and experience in preparing a "master plan" for a major urban area. In short, a review of the New Jersey Supreme Court's handling of the factual background of this case—which was the subject of such voluminous evidence and findings in the trial court below—has a tendency to undermine the confidence which one might otherwise have in a constitutional decision emanating from such a tribunal.

Be that as it may, the Supreme Court of New Jersey apparently regarded as critically important the premise, asserted in its opinion, that *some* architects, engineers and land surveyors had worked on master plans to some extent in the past. Leaving to one side the questionable factual basis of the premise (see p. 15 *supra*), the conclusion that the court drew from the premise is insupportable. The premise that some members of the class have had some planning experience hardly leads to the conclusion that all members of the class may rationally be treated as qualified professional planners. It is true that an individual engineer who has had planning experience might himself be qualified in the planning field, and if we were dealing with a "grandfather clause" which granted an automatic planning license to each such individual, there could be no constitutional objection. But the fact that a few such individuals exist certainly cannot support the wholesale elevation of all

members of the favored professions, present and future, to the preferred status of professional planners.

Moreover, on analysis, the lower court's reasoning is self-destructive. If, as the court suggests, it is reasonable to assume that a man who has worked on master plans has thereby acquired planning competence, it would seem to follow that the many architects, engineers, and land surveyors who have not worked on master plans are not qualified to engage in planning. And, pursuing the same line of reasoning, if actual work on master plans provides a rational basis for automatic entry into the planning profession, obviously the professional planner with planning training and practical planning experience should likewise be given an automatic right of entry without examination. Yet the statute does not so provide. An individual with specialized planning background must take the examination before he can enter his profession. In short, even if one accepts the lower court's formulation of the justification for the challenged statutory provision, the statute is still invidiously discriminatory.

We do not contend that the equal protection clause prohibits automatic entry into a licensed profession except where all members of the preferred groups are affirmatively shown to be qualified. That would be an unduly restrictive test. However, the clause does prohibit such classification in the absence of a rational basis for wholesale entry. In other words, to avoid the label of invidious discrimination as against those required to demonstrate their professional qualifications, there must be a reasonable basis for *assuming* the requisite qualifications on the part of those given auto-

matic entry rights. If no such rational assumption can be made, the entry provisions are unconstitutional.

Thus, the test in the instant case is whether there is a reasonable ground for assuming that those architects, engineers and surveyors entitled by statute to planning licenses are qualified to practice planning. And since all architects, engineers and surveyors are given automatic licenses, the assumption of qualification must apply to all members of each group, not just to some members. But, even under the decision below, only *some* members are said to have participated in the preparation of master plans; hence, historic pratice cannot supply the requisite rational support for automatic entry by *all* architects, engineers and surveyors.

Thus, stripped to its essentials, the decision below amounts to no more than a holding that automatic entry into the planning profession has a rational basis because that was what the statute itself called for. In our view, therefore, affirmance of the decision below would amount to validation of a bootstrap doctrine, under which the necessary support for state legislative action would be supplied by the very statutory language said to violate the Federal Constitution. Disposition of a constitutional issue on that basis would amount to something less than meaningful adjudication, particularly where, as here, the state trial court's specific findings of invidious discrimination based on a trial record were ignored by the state's supreme court and where the licensing provisions are, at best, a maze of inconsistencies, contradictions and anomalies, all of which work to the advantage of certain groups of would-be licensees at the expense of others.

CONCLUSION

Since the New Jersey legislation involved in this case may well set an enduring regulatory pattern for a profession which is rapidly becoming of vital importance to our increasingly urbanized society, the questions presented on this appeal are of genuine public importance. As a matter of fact and as a matter of constitutional law, there is no rational basis for the regulatory scheme involved. This case thus presents a substantial Federal constitutional question which should be resolved only after plenary review by this Court.

Respectfully submitted,

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APPENDIX A

Oral Determination of Superior Court of New Jersey, Chancery Division, Mercer County, January 28, 1966

THE COURT: This is an action for declaratory judgment seeking a construction of the constitutionality of Section 3 and the fourth paragraph of Section 11 of Chapter 109 of the Laws of 1962, known as the Professional Planners' Licensing Law, and as set forth in N.J.S.A. 45:14A-1 and so forth.

Some of the pertinent provisions of this Act are the following:

Section 1 sets forth, "In order to safeguard life, health and property, and promote the public welfare, any person practicing professional planning shall hereafter be required to submit evidence that he is qualified to practice and shall be licensed as hereinafter provided." The section also makes it unlawful for any person to practice or offer to practice professional planning in this state or to use the title "Professional Planner" unless such person is duly licensed under the act, or convey an impression that such person is practicing professional planning or is a professional planner.

Section 2 defines the term "practice of professional planning" as "The administration, advising, consultation or performance of professional work in the development of master plans in accordance with Chapters 27 and 55 of Title 40 of the Revised Statutes, and professional planning services related thereto. And the section ends with this sentence, "The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey."

Section 3, which is one of the sections in controversy, provides, "Nothing in this act shall be construed to prohibit any licensed professional engineer, land survyor or

registered architect in the State of New Jersey from engaging in any or all of the functions or performing any or all of the services set forth in this act, prvided, however, that such persons shall not hold themselves out as professiona. planners or planners."

Now, Section 9 sets forth the minimal educational and experience qualifications to be eligible for an examination for a license.

Paragraph 1. A graduate degree in Professional Planning with a minimum of 3 years experience in full time practice of planning.

Paragraph 2. An undergraduate degree offering a minimum of 21 credit hours in planning subjects as approved by the Board; or

Paragraph 4. For a period of 8 years only subsequent to July 1, 1963, a degree in a closely related course of study such as architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science or economics, with a minimum of 18 credit hours in planning subjects with a minimum of 5 years experience in full time practice of professional planning.

And then it sets forth that the applicant shall obtain a passing grade as determined by the Board, upon a qualifying written examination. Such examination shall comprise subject matters covering history of urban, rural, and regional planning; fundamental theories, research methods and common basic standards in professional planning; administrative and legal problems, instruments and methods; current planning design and techniques; history, principles and requirements of planning and zoning procedures in the State of New Jersey.

The other section that is being challenged is the fourth paragraph of Section 11, and it is as follows: "The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate

of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect in New Jersey."

Section 16 subjects the violator of the provision of the law to a penalty of not more than $200.00 for the first offense and not more than $500.00 for each and every subsequent offense.

Section 17 provides that the state or its political subdivisions shall hereafter employ only licensed professional planners.

And Section 19 is the grandfather clause permitting the licensing of qualified planners for a one year period without an examination.

At the present time there exists an exparte restraint precluding the issuance of any licenses under this act. That was done by consent.

As I indicated, paragraphs 3 and 4 of Section 11 are challenged by the plaintiffs. They contend that planning is a distinct profession, that qualifications in architecture, enginering or land-surveying do not guarantee competence in planning. And they further contend that the disputed sections of the law constitute an unconstitutional denial of equal protection of laws in that there is an arbitrary classification, that it does not relate to any competence in planning. They also contend that the sections violate the due process clause of the Constitution in that they advance the interest of a particular group as against the common good, and that it is special legislation conferring exclusive privileges on a special class.

And in answer to a contention made by the defendants that the invalidity of the challenged provisions does not affect the validity of the remainder of the law, they rely upon R.S.1:1-10 as amended, which gives every act a severability clause, and that the invalidity of a part of an

act does not affect the rest of it if the part affected is not mutually dependent upon the remainder of the act.

The defendants contend that the statute is a valid exercise of the Legislature, carrying with it a strong presumption of constitutionality which places a heavy burden on the plaintiffs to overcome. They further contend that the Legislature made a proper classification, and that there is a reasonable basis for it, claiming that the purpose of the law is to protect the public in planning by competent persons. And they rely also on the fact of the historical background of the three profssions in that the Legislature recognized the competence of the three professions to obtain a license.

The defendants also raise the question that if the two disputed sections are unconstitutional, that the entire act fails, contending that severability is a question of legislative intent. And since no severability clause was included in the act, that the Legislature intended that engineers, architects and land surveyors be licensed.

The defendant architects make an additional contention that in addition to those points that the statute is void in its entirety since the scope of the practice of planning is uncertain as set forth in the act.

The position of the Attorney General is that the entire act is constitutional, but if the disputed sections are held unconstitutional, that they are severable and do not affect the remainder of the act.

Now to review the testimony which was introduced in this case, I shall first briefly summarize the evidence introduced by the plaintiffs.

Mr. Blakeman, who holds a Bachelor of Architecture and City Planning from MIT, received in 1936, has been engaged in city, regional and state planning activities. He has also acted as a private consultant. He gave a brief history of planning beginning with the era of the Egyp-

tians and Romans, and carried it forward so that it evolved into the modern oriented planning which began in the United States in the 1920's. It was further highlighted by the depression years of 1930's during which time there was an enormous growth in city planning. He conceded that planning came out of the professions of engineering and architecture. Harvard was the first university which introduced planning in its curriculum as a separate school, and that was in the 20's. And by the 40's planning became a social science separate and apart from engineering and architecture. It was his opinion that architects, engineers and land surveyors were not qualified to act as planners, nor were they better qualified to act as planners than persons with degrees in sociology, economics, landscape architecture and law.

Mr. Powell, who is presently Planning Director for the Middlesex County Planning Board, testified that he obtained a Master's Degree in City Planning at MIT and has been a city planner for 17 years. He reviewed the basic characteristics of the master plan and the skills necessary to prepare a master plan and testified that the gathering of information for such a plan was not an engineering function. He also contended that he acquired no proficiency in planning as a result of his undergraduate engineering study at Yale University.

Mr. Candeub, who holds a Master's Degree in Planning from MIT, has also been a city planner for 17 years. He testified that he prepared over 100 master plans. He detailed the process in creating a master plan commencing with the concept leading to its detailing and finally to its implementation. And likewise he concluded that engineers and architects are not qualified to act as modern planners, even though he conceded that the old timers in planning came from those professions. He based this upon the fact that planning has moved far away from its original base. As he summed it up; engineers deal with concrete

objects, architects with buildings and planners deal with problems.

Mr. O'Harrow holds a Bachelor of Science Degree in Engineering from Purdue University, and since 1934 has been engaged in planning activities, and he is presently Executive Director of the American Society of Planning Officials. He testified that the demand for planners exceeds the supply; that he is familiar with the skills of engineers, architects and surveyors; and that he would not recommend one of that profession to prepare a master plan. And he concluded that architects, engineers and land surveyors are not competent to prepare master plans as defined in the New Jersey Statutes. He further indicated that 80 to 90% of the planning jobs in the country are filled through his organization, and that no municipal agency has offered to hire a person for a planning position except a person with planning experience.

Mr. Hodgell, a professor in Architecture at Nebraska University, is a licensed engineer, architect and planner, and at one time or another engaged in all three professions. He defined the duties of the three professions and reviewed their specific college curricula and concluded that the subject content of engineering and architecture was different from that of planning, and that the subjects taught for engineering and architectural degrees do not give its graduates any competence in planning since no planning courses are included in the curricula for engineers or architects. He admitted that there was some relationship between electrical and mechanical engineering and planning, as previously taught, but since the present emphasis in these courses is upon research, there is no present relationship between them and planning. He considered civil engineers and architects as being in complimentary professions to that of planners. And he concluded, as did the other witnesses for the plaintiff, that architects, engineers and land surveyors with 3 to 4

years experience in their respective fields would not qualify as planners under the act.

Mr. Howard, a Professor in Planning at MIT and a Planning Consultant, testified that MIT had a separate department known as City and Regional Planning, and that it was a two-year post graduate course leading to a Master's Degree in City Planning. He also indicated that of the 30 to 40 schools giving degrees in City Planning that only 3 gave Bachelor's degrees and the rest gave Master's degrees in City Planning. And, as did the previous witnesses, he also concluded that architects, engineers and land surveyors with 3 or 4 years experience were not competent to engage in professional planning as defined in the New Jersey Law.

Mr. Chavooshian, Director of the State Division of Regional Planning, described the 701 Program whereby financial assistance is given to local municipalities in creating master plans. He indicated that a contract is entered into with the State and the requirement being that the planner in charge have a degree in Planning plus planning experience. He also testified that an architect, engineer or land surveyor without experience in planning would not be competent to contract with the State unless the contract provided that the planner in charge be a person educated and trained in planning.

Answers to Interrogatories propounded by the plaintiff disclose the fact that there were 2478 architects licensed to practice architecture in New Jersey as of December 31, 1964, and that in a 6-year period from January 1, 1959 to December 31, 1964, 663 were admitted to practice, 204 by written examination and 459 on the basis of reciprocity.

These answers to Interrogatories also indicated that there were 9299 licensed professional engineers practicing or licensed in New Jersey as of December 31, 1964. And by a sampling process it was disclosed that 29% are

Civil Engineers, 35% Mechanical, 10.6 Chemical, 25.4 Electrical, and the percent of Mining, Ceramic and Agricultural Engineers was minimal.

The defendants produced the following witnesses:

Mr. Pollard, a member of a large engineering consulting firm and a licensed engineer, by his testimony indicated that he was an expert in traffic and transportation planning. He testified that there are many engineering elements contained in the preparation of a master plan. He also testified that certain branches of engineering such as chemical, mechanical, aeronautical, electrical, agricultural and ceramic with 4 years experience in their respective fields would not insure competence to prepare a master plan.

Mr. Reuter, a Professional Engineer and Land Surveyor licensed in New Jersey, testified that he was a Municipal Engineer for 18 years, and that he prepared 3 master plans, and likewise testified that there are many engineering elements in the various components of a master plan. He indicated that engineering, architecture and land surveying are related to planning. At one point in his testimony he stated that an engineer was qualified to prepare a master plan, and later on he indicated that an engineer with only an Engineering Degree would need experience to prepare a master plan.

Mr. Swackhamer, a New Jersey Registered Architect, testified that an architect would be competent to engage in most phases of the master plan, although he personally never engaged in City Planning himself, nor did he prepare a master plan. He also testified that a planner in charge would need specialized training or experience in planning, and that an architect would also have to have planning experience to prepare a master plan. He was, however, concerned that the elimination of the exception would curtail the activities of an architect.

Mr. Taylor, a graduate Civil Engineer from Princeton, has been a partner in an engineering firm and has done a considerable amount of municipal engineering since then. His firm prepared a master plan for the City of Burlington, but in so doing engaged a professional planner to assist in the work. He prepared a number of feasibility studies bearing on planning problems. And he also conceded that many engineers such as chemical, aeronautical, electrical and mechanical engineers could not prepare a master plan without experience, yet he felt a civil engineer could do so. He reviewed the elements comprising a master plan and noted the engineering connotations connected therewith. He believes that the fields of engineering and architecture and land surveying and planning overlap. He would be concerned if there would be a precise delineation of the functions between these professions. He was also concerned over the elimination of the exception in the statute, and conceded that it would preclude him from preparing a master plan, but he felt also that the engineer would be seriously affected if he could not perform some of the engineering components of the master plan.

Mr. Spillers, a Professor at Columbia teaching Civil Engineering, testified that the modern trend in engineering places an emphasis on groundwork rather than specific engineering. He reviewed the elements of the master plan as set forth in the statute and pointed out the engineering connotations involved therewith. Yet he admitted that he never prepared a comprehensive plan and was not familiar with the detailed work a professional planner performs. He felt that an engineer by training was equipped to prepare a master plan, yet he admitted that Columbia gave degrees in Planning and presently intends to install a graduate course in Professional Planning.

Brother Amandus Leo, a former Dean of Engineering at Manhattan College also reviewed the engineering connotations in the preparation of a master plan, and while

he felt that a planner could not prepare a master plan without engineering advice, he nevertheless concluded that only an engineer, if interested in the planning field, could prepare a master plan. He further commented that if a boy entering Manhattan expressed an interest in professional planning, that he would send him to Columbia to receive an education in planning.

Mr. DeMartin, a New Jersey Registered Architect, testified that he specialized in commercial shopping centers and urban renewal. He defined an urban renewal plan as the fulfillment of the Master Plan. He testified that architecture, engineering and planning are involved in the preparation of a master plan. He reviewed the elements that enter into an urban renewal project plan. He felt the professions overlapped. He concluded that an architect with experience could be a professional planner. He was also concerned as to the impact of the statute upon the profession of architecture and the curtailing of his practice if the challenged section be held unconstitutional.

Mr. Tatlow, President of one of the larger engineering firms in the United States, and a graduate Civil Engineer and a Registered Professional Engineer in some 22 states, reviewed a number of large planning projects in which his firm was engaged, although he indicated that planning for public agencies was not the primary activity of his firm, and that he personally never prepared a master plan. As did the other witnesses for the defendants, he indicated that there are many engineering connotations in a master plan. He then gave as an example that the transportation plan for the San Francisco area was 80 to 90% engineering. He concluded that there is a place for the planning profession and conceded that if his firm was engaged to prepare a master plan he would seek the assistance of a professional planner.

Mr. Requardt, President of one of the large engineering firms, practicing in Baltimore, and a Registered Engineer,

detailed the work done by his firm which consisted in designing sewage plants and lines, highways, waterways, airports. He considered himself a designer rather than a planner, yet he felt that planning was a part of engineering. He also testified that there is a logical connection between engineering and architecture, land surveying and planning. He concluded that in his opinion there is no necessity to register planners, and that planning would be better done if it be in the hands of professional engineers.

Mr. McCord, also a partner in Mr. Requardt's firm, and a registered engineer, detailed a number of the developments in which he was in charge, and he testified that they covered all of the elements contained in our statute relating to master plans. He testified that he used a planner once but being dissatisfied with the result of the planner's work, proceeded on other projects without one. He agreed with Mr. Requardt that the planner in charge should be an engineer. Yet on cross examination he did not name or could not name an engineer in charge of developing a master plan. He also recognized the fact that there are competent planners.

So, to summarize the testimony of all these witnesses who testified, it would seem that the witnesses for the plaintiff contend that engineers, architects and land surveyors do not have education in planning to enable them to prepare a master plan. On the other hand, the witnesses for the defendants, with the exception of possibly Spillers, I suppose, somewhat and rather hesitatingly concurred by admitting that a certain amount of experience in planning is a prerequisite in assuring competence to prepare a master plan. All of them conceded that engineers with any experience would be competent, engineers or architects would be competent to prepare a master plan.

Now, to briefly go into the law that is applicable to this case, there is no question but that the state, through its

police power, may regulate professions and establish qualifications for admission, since it is a legitimate end or object of government to assure the qualifications and competency of learned professions whose practice concerns the public interest, provided that the means chosen are reasonably calculated to promote the public purpose involved.

The public purpose can only be to preclude or restrict the incompetent or untrained person from practicing in the profession. Here the profession to be regulated is that of professional planning under the planner's licensing act. And he may be defined as a person who develops master plans for governmental agencies in accordance with the provision of the municipal and county planning acts.

I think the need for competent urban regional and state planning in New Jersey should be perfectly obvious. New Jersey is a rapidly growing urban state, and the problems relating to its transportation, educational facilities, parks, water, sewer, slums, blight, traffic congestion, air and water pollution, are imposing and these problems will intensify in the future if they are not met by adequate competent planning. This, it seems to me, is the problem the Legislature sought to solve by the enactment of the Planning Licensing Act.

Next we turn to the question whether the means chosen are reasonably calculated to achieve that purpose. There is no question but that a duly enacted statute is clothed with a strong presumption of constitutionality, and in order to successfully overcome that presumption a challenger must negate every conceivable basis which might reasonably support the legislative action. The function of a court is only to determine whether it is possible to say that the legislative decision is without rational basis.

However, the constitutional guarantees of due process and equal protection are factors and must necessarily be considered and cannot be disregarded in evaluating the

reasonableness of any legislative classification. The propriety of the classification must relate to the objective to be accomplished.

The plaintiff contends that no rational basis in fact does exist for the legislative judgment, and if this be clearly established the statute assailed will be declared unconstitutional.

I believe the proof has been clearly established that professional or city planning is a separate and distinct profession and differs from that of professional engineering, architecture and land surveying. The very statement annexed to the bill in question, "Planning is a distinct, separate profession, which requires specialized training. It is not a branch of engineering, architecture or any other profession. Thirty leading colleges and universities award degrees in planning, and more than 400 New Jersey municipalities and 15 counties have planning boards."

I would, however, be remiss if I did not mention the fact that the statement also contains the following: "Provisions are made for the licensing as professional planners of persons with degrees in related fields and of persons in allied professions such as architecture and engineering. The bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel."

I think the fact that planning is a separate profession has been borne out by the evidence in this case. Yet it is also true that the work and duties of professional planners, architects, engineers and land surveyors do overlap or complement one another. As the statement in the act indicates, they bear a relation to one another.

To briefly review the work of the professions in general, the professional planner's job is the production of a master plan of a municipality, county or region, and the statutes clearly set forth what comprises a master plan.

The primary function of the professional engineer is to prepare detailed plans and supervise the construction of public or private engineering or industrial projects. It might also be noted that under the engineering label in New Jersey are the civil, mechanical, electrical, chemical, ceramic, metalurgical, aeronautical and other branches of engineering. And it might seem on the face of it that some of these highly specialized branches have little or nothing to do with professional planning. Of all the engineering branches, the testimony in this case would indicate that civil engineers are certainly best qualified for the planning field, but they consitute only 29% of the total registered engineers leaving some 71% with little or not [sic] competence in planning, if any credence could be given to the sampling which was annexed to the interrogatories. And I might add that sampling has not been contradicted.

Now, going back to the work of the professions, the work of the architect is that of planning and designing structures or urban areas; and that of the land surveyor is just what its name implies, survey of land areas.

Now to get to the questions in issue.

First, is the fourth paragraph of Section 11 of the Act unconstitutional under the due process and equal protection clause of the United States and the New Jersey constitutions? I think I have already stated some of the general legal principles relating to this issue. As I stated previously, the Act is defined to protect the public against the consequences of incompetent planning. It should necessarily follow that a classification to carry out this primary purpose would be based on the possession of those planning skills and qualifications to assure competent planning. To state the proposition in another way, if the classification is so constructed as not to be related to competence in planning by permitting a number of persons not qualified to practice planning to do so, it follows that the classifica-

tion does not bear a reasonable relation to the legislative purpose and it falls under the equal protection clause.

From my analysis of the evidence that I have heard for the past week or so, I have arrived at a conclusion that the challenged section, namely, the fourth paragraph of Section 11 does not bear a rational relationship to the statutory purpose.

The fact that historically planning evolved from architecture and engineering is of little or no consequence. This may be an unfortunate fact, but it is now recognized that the profession of planning is a separate and distinct profession. The evidence does not bear out the fact that an engineer, architect or land surveyor by the education he has received and simply with the training in his respective field possesses the qualifications of a professional planner. Even this is admitted by some of the defendants' own witnesses.

Nor does the fact that the professions overlap or complement one another help. The differences between the two are still substantial. Even some of the defendants' witnesses testified that they sought advice of planning experts if they contemplated preparing a master plan.

I have to admit, however, that there are probably many engineers and architects capable of preparing a master plan, and yet it is also evident that there are many who are not qualified. And this, as I say, is from the defendants' own witnesses. But the fact that there do exist competent engineers who can prepare a master plan, and I am satisfied that all of the engineers who testified in this case could adequately, if they put their minds to it, prepare an adequate master plan. But it seems to me that is not the question for me to decide. I think the evidence is still overwhelming that there exists a great number of engineers who are not qualified, who should not fall under the benefit of this statute by obtaining a license solely because of

the fact that they are a professional licensed engineer, architect or land surveyor.

The mere fact that the various components of a master plan have many engineering connotations as illustrated by the defendants' witnesses should not warrant giving a license to all licensed engineers, architects or land surveyors whether qualified or not. As I indicated, there was ample evidence even from the defendants' witnesses that all engineers, architects and land surveyors do not simply, by their educational background, come into the category of qualified professional planners. Going again to the primary purpose of the law, namely, to see that qualified persons undertake planning, and recognizing by the law that professional planning is a separate profession, it should necessarily follow that only persons educated and trained in professional planning be licensed. If the legislation is to be of any benefit to the public at all, it seems to me that this condition has to be a prerequisite. If this section were to remain in the law, it would result in many incompetent persons being granted a license. Actually, if that section remained in the law, it would probably be better if there be no licensing of planners at all.

While the professions admittedly overlap, complement or implement one another, we are here dealing with a legally recognized separate and distinct profession, and to permit unqualified persons, whether they be engineers, architects or land surveyors, to be licensed would in my opinion fall short of the legislative purpose.

The purpose is to develop a master plan as a whole. We are not necessarily dealing with the component parts of a master plan.

Then, too, to require a person with a planning degree to take an examination to qualify for a license and to further provide that for 6 years experience with a degree in architecture, engineering or landscape architecture with 18 cred-

its in planning plus 5 years experience must also take an examination as set forth in the ninth section, and on the other hand to provide for the automatic licensing of a licensed professional engineer, surveyor or registered architect practicing solely in his respective field, which obviously might presume qualifications for planning, when, as I indicated, the evidence that I have heard indicates to the contrary, does not on the face of it make sense, and it is my judgment that this paragraph violates the equal protection and due process laws of the United States and New Jersey constitutions.

Going now to Section 3, this is much more troublesome. There is evidence that engineers and architects have undertaken projects which clearly come within the general sphere of planning. To specifically mention a few, Mr. Pollard's street and highway plan of Champaign-Urbana, Illinois, and his Major Street and Highway Plan for Bloomington-Normal urban area, the plans that were placed in evidence today by Mr. McCord certainly indicate that as to certain phases of the component parts of the planning act that engineers do have competence and certainly should not be precluded from doing that type of work.

As I indicated, the evidence has borne out the fact that engineering and architectural studies are components of a master plan, and that planners rely upon them for information and data and that they are needed to implement master plans.

I think, too, it should be borne in mind that there are rather severe penalties for violating the provisions of this act. $200.00 for the first offense and $500.00 for subsequent offenses. The challenged Section 3 provides, and I am going to quote it again, "Nothing shall be construed to prohibit licensed professional engineers, land surveyors or registered architects from engaging in any or all of the functions or performing any or all of the services set forth in

this act, provided, however, that such persons shall not hold themselves out as professional planners." I think I might point out, too, that this is not necessarily a licensing section. It is an exemption section. The fourth paragraph of Section 11 is a licensing section.

To extend this section in my opinion would preclude a man of Mr. Pollard's or Mr. McCord's stature from preparing complex studies if they were practicing in New Jersey. I can't believe that that would be the intent of the Legislature. Certainly the public welfare will not be impaired by work done by men either of Mr. Pollard's or Mr. McCord's stature and men of their caliber.

Again I have to advert to the primary purpose of the act which is to assure that there be competence in professional planning which has been defined generally as the preparation of master plans for public bodies. I think it ought to be pointed out that even this definition, section 2(~~c~~) contains an admonition that the work of the professional planner shall not include or supersede the duties of a licensed professional engineer, land surveyor or registered architect.

The next section, namely, (3) merely reiterates this in another way, in that it does not prohibit engineers, architects and land surveyors from engaging in services under the act, provided that they do not hold themselves out as planners.

So, to read the two together it simply means that planners are the only ones who can prepare master plans. Engineers, architects and surveyors can operate in their respective fields which might overlap or complement the field of professional planning, but that they cannot hold themselves out as professional planners unless so licensed.

I will admit that the phrase, "Any or all of the functions or performing any or all of the services" is broad. Yet when it is considered in the constitutional context giving consideration to the purposes of the act, I cannot hold it uncon-

stitutional. It is my judgment that the plaintiffs have not established that this section is unconstitutional. The inclusion of this section is in no sense arbitrary or capricious. It does not violate the primary purpose of the act. By its very language it does not indicate that engineers, architects or surveyors are planners. In fact the reverse is true. It states they shall not hold themselves out as professional planners. To excind it might subject every engineer, architect or surveyor to a penalty every time he performed any of the functions or services bearing upon planning. And don't think this might not happen. I can still remember when I was a young attorney my experience in defending the proprietor of a corner grocery store in the depth of the depression in a District Court action for violating the law prohibiting the practice of pharmacy. The offense—the sale of a package of aspirin and a bottle of camphorated oil.

Then, too, we have analogous situations. There is a distinction between a public accountant and a Certified Public Accountant. A public accountant may function as such, and he does practically the same work as a Certified Public Accountant, but he is precluded from holding himself out as a Certified Public Accountant.

Likewise, a number of professions and occupations are unaffected in the beauty culture field.

Then it might also be pointed out that even a professional engineer must take an examination to engage in the practice of architecture. So it is not unheard of that a person engaged in one profession has to establish his competence to engage in a complementary one.

As an aside, I revert to Mr. Zieg'ar's cross examination and in a sense contending that no one person might be qualified to prepare a master plan. I suppose that might lead to the conclusion—let's forget everything. Leave things just as they were. And I admit for a moment a doubt did enter my mind that maybe he might have something. But

then after hearing Mr. Tatlow on the preeminence of civil engineers, I even began to wonder how the world was created without one.

This brings me to the final question, but I think before I go into this there is one collateral matter to take up. Mr. Walsh made a contention that the definition of planning is too indefinite, and therefore the entire act falls. Frankly I don't think this is so. By reading the act in question and the acts covering master plans, there is no question that the profession of professional planning is identifiable. Obviously I don't think it can be more precise—neither are the definitions of an architect, engineer or land surveyor. It is my determination that this attack upon the act is without merit.

So this brings me to the final matter, does the entire act fall by reason of the deletion of the fourth paragraph of Section 11? As to this point, the Attorney General sides with the plaintiffs. Severability is a question of legislative intent. The engineers and architects contend there is a presumption that the Legislature intended the statute should be effective in its entirety since it does not contain a severability clause. Thus there is a duty on the part of the plaintiffs to overcome this presumption.

There is no question but that the Legislature intended to include engineers, architects and land surveyors, and the introductory statement of the act likewise stated this fact. However, I have already determined that the fourth paragraph of Section 11 is unconstitutional and void.

I further realize that courts apply the doctrine of severability with caution. Mr. Walsh in his brief contended that the insertion of that paragraph induced the enactment of the law. While that might be so, nevertheless if it be unconstitutional, this should not necessarily void the entire act if the [illegible] stand on its own feet without the section in question.

Again we have to go to the basic intent of the law. Can it be established without the clause in question? My answer is in the affirmative. The intent of the act is possible with this clause being deleted. In my opinion it is not intimately

connected nor mutually dependent upon the primary purpose. Then, too, the presence or absence of a severability clause is not controlling. R.S. 1:1-10 provides that severability is applicable to all statutes.

Therefore it is my conclusion that the mere deletion of the fourth paragraph of Section 11 does not affect the remainder of the act.

Are there any questions, gentlemen?

Mr. Berman: If your Honor please, the plaintiff sought a preliminary restraint in the case which by its own terms I believe would end the determination of the cause. I am just wondering whether we need to have an order on that or whether by the terms of the preliminary restraint—

The Court: I will terminate it.

Mr. Davis: If your Honor please, I wonder if we might keep the restraint on until the end of the tolling of the time for an appeal has expired.

The Court: Do you have anything to say?

Mr. Berman: It seems to me, your Honor, that that application for a stay can be made by the defendant, but so far as the preliminary restraint is concerned, by its own terms it would terminate.

The Court: But it was done by consent. He is making a request that it continue.

Mr. Davis: That is correct.

The Court: Why can't we do that?

Mr. Ziegler: I don't see any harm—

The Court: I am asking Mr. Berman the question. Why can't we do it? Why can't it be done?

Mr. Berman: Well, your Honor, the statement was, are they going to continue the restraint—will the restraint be continued until the tolling of the time for appeal? I suppose in some respects the Attorney General would be in a better position to know the facts on this, but it seems to me that we have had a definite board now that has been inoperative for several years, and if this thing is going up on appeal it may be another couple of years before there is an ultimate determination of the cause. I think on that basis, since the engineers can, by virtue of your Honor's

decision, practice in their own profession by virtue of their own license, I don't really see the need for continuing the restraint or continuing this board sitting there for another, whatever time it is going to take to decide the appeal.

The Court: Why shouldn't the board process certain applications of planners?

Mr. Davis: My thought was, your Honor, in the orderly administration of the act, should an appeal subsequently be filed and this board operate in the meantime until a separate restraint can be gotten as soon as it could be gotten even pending the appeal, that we might have one or two of these things issue in the meantime that would be outstanding, the rest tied up immediately, and for the orderly administration of it, it would seem to me that no one is actually being harmed at the moment by this restraint.

The Court: What do you think, Mr. Rudolph?

Mr. Rudolph: I don't think I am authorized to make a commitment for the Attorney General. It would seem to me that a part of your ruling would preclude the board from issuing licenses to engineers. So certainly for that part there is no need to continue the restraint. With respect to the processing of licenses for planners, I would not care to commit myself at this time.

Mr. Ziegler: I suggest that your Honor continue the restraint for a reasonable period of time, say 10 days, at which time the parties may decide or both may decide to appeal from this Court's determination, in which event it would seem that the restraint should be continued and at that time within 10 days an application for stay could be made. I think that would be reasonable and adequate time within which to determine it. It should be remembered that these parties represent representative groups. They don't represent an individual client, and an immediate decision in matter of this would not be possible. They have to report back, report back to certain organizations, to meet and

decide and determine. I don't think that perhaps even 10 days would be adequate for that purpose, but any way I suggest that as a starting point that for a reasonable time the restraints be continued until a decision or determination can be made by the parties, then an application for a stay can be applied for and the court can then determine whether it should remain or be eliminated.

Mr. Owen: Your Honor, although I am not admitted to practice in the State of New Jersey, it would be my impression that as a matter of general equity, the other side would have to show some irreparable injury that would occur to justify the stay. I can't, myself, see what injury there will be to any of the amici or the defendant board if the stay is suspended at this point. There simply isn't any injury that we are seeking to prevent at this time.

Mr. Rudolph: Perhaps I can take some position. Going one step further, I think that there would be no one injured by allowing the board to issue licenses to planners and perhaps on the other hand your decision would be implemented in that everyone who would be practicing any part of the planning function would then be licensed. So perhaps if the board were allowed to process applications, this would be the best way to implement your decision.

The Court: I think what I am going to do is, I am going to continue the restraint until Feberuary 11th. Now, that means that it will expire on that date unless either side moves one way or another. Now, I would like to have whatever you intend to do by that date, I would like to have it in my hands by—well, I still think I am going to stay it until then. There is a question under 1:4-6, I suppose, about power. It certainly seems to me by waiting 2 weeks will harm no one. After all, there is a lot in my opinion that the Supreme Court, if an appeal is taken, can work with, I would think it might be more practical for the board probably to wait and see what happens, whether an appeal is

going to be taken. My inclination on the 11th I probably will not extend it. So I think if you are going to appeal it you better do it before that date. You are going to have to do something about it by the 11th. After that it will expire and you will have to then apply to the Appellate Court. So you have two weeks to make up your mind.

Mr. Ziegler: I think your Honor has the power to grant a stay, too.

The Court: I know I do. I never do. I mean I believe in my opinions. I have to go to sleep with them.

(Hearing closed.)

SUPREME COURT OF NEW JERSEY
A-55. SEPTEMBER TERM 1966

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, etc., *et al*, *Plaintiffs-Respondents*,

v.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, *Defendant-Appellant*,

and

LEE T. PURCELL and DONALD R. GOODKIND, *Defendants-Interveners-Appellants*.

Argued November 7, 1966—Decided Feb. 20, 1967.

On appeal from judgment of Superior Court, Chancery Division.

Mr. Joseph A. Hoffman, Assistant Attorney General, argued the cause for defendant-appellant (*Mr. Arthur J. Sills*, Attorney General of New Jersey, attorney).

Mr. Theodore W. Geiser argued the cause for defendants-intervenors-appellants (*Messrs. Pindar, McElroy, Connell & Foley*, attorneys; *Mr. Adrian M. Foley, Jr.*, of counsel; *Mrs. Sonia Napolitano*, on the brief).

Mr. Ronald Berman argued the cause for plaintiffs-respondents (*Messrs. Berman & Ets*, attorneys).

Mr. Harry A. Walsh, attorney for New Jersey Society of Architects, argued the cause *amicus curiae*.

Mr. John L. Miller, Jr. argued the cause *amicus curiae* for New Jersey Society of Professional Engineers (*Messrs. Miller, Myers, Matteo & Davis*, attorneys; *Mr. Theodore H. Davis*, on the brief).

The opinion of the Court was delivered by FRANCIS, J.

In this declaratory judgment proceeding the Chancery Division of the Superior Court declared unconstitutional a portion of *section* 11 of the professional planners licensing act, *L.*-1962, *c.* 109; *N.J.S.A.* 45:14A-11. The condemned portion exempted duly licensed professional engineers, licensed land surveyors and registered architects of this State from the requirement, imposed by the statute on all other persons, to take and pass an examination for a planner's license, and it directed the State Board of Professional Planners (which was created by the same statute) to issue such a license on application therefor and payment of fee by any such exempted person. The trial court also held that the invalid portion of *section* 11 was severable, and not so intimately connected with the statute as to indicate that the Legislature would not have adopted the remainder without it. The Board was restrained from issuing licenses to persons who sought to qualify under the offending exemption. An appeal was taken to the Appellate Division, where the restraint was continued until final judgment. Thereafter, before the matter was reached for argument there, all parties moved for certification pursuant to *R. R.* 1:10-3, and we granted the motion.

The action was instituted by the New Jersey Chapter, American Institute of Planners, an unincorporated association of the State of New Jersey. The association is a pro-

fessional society created to study and advance the art and science of city, regional, state and national planning. The complaint fails to allege that the organization consists of seven or more members, which the statute, *N.J.S.A.* 2*A*:64-1, indicates is a prerequisite to suit in the entity name. But no attack on its standing to act as plaintiff is made on that ground. Six individuals joined as plaintiffs describing themselves as engaged in the practice of professional planning, and alleging that they are all qualified by education and training to engage in the practice of planning.

The only defendant named in this complaint was New Jersey State Board of Professional Planners. Thereafter the New Jersey Society of Professional Engineers, the New Jersey Association of Consulting Engineers and the New Jersey Society of Architects were allowed to intervene as defendants in the trial court. Although designated *amici curiae*, they were given leave to participate in the proceedings as fully as if they were named defendants originally. After entry of judgment in the trial court, Donald R. Goodkind and Lee T. Purcell, licensed professional engineers, were granted leave to intervene as defendants so as to participate in the appeal.

The standing of the Institute to bring the action challenging constitutionality of a part of the statute is contested for the first time on appeal. In doing so, appellants place reliance upon the much criticized case of *New Jersey Bankers Ass'n v. Van Riper*, 1 *N. J.* 193 (1948). See, *Schnitzer, Civil Practice & Procedure*, 9 *Rutgers L. Rev.* 307, 317 (1954); *Jaffe, Standing to Secure Judicial Review: Private Actions*, 75 *Harvard L. Rev.* 255, 301 (1961). We need not resolve the issue here, but see *New Jersey State Bar Association v. Northern New Jersey Mortgage Associates*, 22 *N. J.* 184, 196 (1956). The individual plaintiffs as practicing planners have sufficient interest in the validity of the statute to prosecute the action. *N. J. Home*

Builders Ass'n v. *Div. on Civil Rights*, 81 *N. J. Super.* 248 (*Ch. Div.* 1963), aff'd *sub nom. David* v. *Vesta Co.*, 45 *N.J.* 301, 309 (1965).

I.

The Statute

Prior to 1962 unsuccessful attempts were made under the sponsorship of the American Institute of Planners to obtain passage by the Legislature of a so-called professional planners licensing act. The proposal encountered opposition from other established professional groups, principally engineers, land surveyors and architects, who were already subject to separate licensing statutes and who had qualified for licenses by meeting the conditions imposed thereby. Finally in 1962 the act in question, obviously a compromise measure (more of this later) was adopted with the acquiescence of the competing interests, as *chapter* 109 of the *Laws* of 1962.

The act provided that after July 10, 1962 no person could practice or offer to practice professional planning in this State unless he were licensed to do so under its provisions. The practice of professional planning is defined in most general terms in *section* 2 as "the administration, advising, consultation or performance of professional work in the development of master plans in accordance with the provisions of chapters 27 and 55 of Title 40 of the Revised Statutes, as amended and supplemented; and other professional planning services related thereto intended primarily to guide governmental policy for the assurance of the orderly and co-ordinated development of municipal, county, regional, and metropolitan land areas, and the State or portions thereof." *N.J.S.A.* 45:14*A*-2.

Chapters 27 and 55 of *Title* 40 provide for the creation of county, regional and municipal planning boards to make and adopt master plans for the physical development of the political unit involved. For example, a county planning

board is directed to make a master plan for the physical development of the county, and such plan with the accompanying maps, plats, charts and descriptive and explanatory matter is required to show the board's recommendations for the development of the territory covered by the plan, and may include "among other things, the general location, character, and extent of streets or roads, viaducts, bridges, waterway and waterfront developments, parkways, playgrounds, forests, reservations, parks, airports, and other public ways, grounds, places and spaces; the general location and extent of forests, agricultural areas, and open-development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, or the protection of urban development, and such other features as may be important to the development of the county." *N.J.S.A.* 40:27-2. The board is authorized to employ "experts" for the making of the plan. *N.J.S.A.* 40:27-3.

A regional planning board, if created, is directed also to make a master plan and "such surveys and studies as may be essential thereto," including "all the elements of physical development that may be locally important and desirable." *N.J.S.A.* 40:27-10.

A municipal planning board is authorized to prepare "a master plan for the physical development of the municipality which generally shall comprise land use, circulation, and a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan." The plan "shall be a composite of the one or more mapped and written proposals recommending the physical development of the municipality * * *." *N.J.S.A.* 40:55-1.10. "The master plan may cover proposals for:

(a) the use of land and buildings—residential, commercial, industrial, mining, agricultural, park, and other like matters;

(b) services—water supply, utilities, sewerage, and other like matters;

(c) transportation—street parking, public transit, freight facilities, airports, and other like matters;

(d) housing—residential standards, slum clearance and redevelopment, and other like matters;

(e) conservation—water, forest, soil, flood control, and other like matters;

(f) public and semi-public facilities—civic center, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals, and other like matters;

(g) the distribution and density of population;

(h) other elements of municipal growth and development." *N.J.S.A.* 40:55-1.11.

The master plan is required to be made "with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development and the maintenance of property values previously established. To such end the master plan shall also include adequate provision for traffic and recreation, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of good civic design and arrangements, the wise and efficient expenditure of public funds, and adequate provision for public utilities and other public requirements." *N.J.S.A.* 40:55-1.12.

In order to become licensed as a professional planner, a candidate must file an application under oath showing that he has the minimum educational qualifications. They are:

(a) A graduate degree in professional planning from an accredited college or university in a curriculum in recog-

nized planning subjects as shall be approved by the State Board of Professional Planners, plus a minimum of three years experience in the full-time practice of professional planning; or (b) an undergraduate degree from an accredited college or university in a curriculum offering a major or option comprising a minimum of 21 credit hours in such recognized planning subjects as shall be approved by the board, with a minimum of four years experience in the full-time practice of professional planning; or, (c) graduation from a secondary school and at least 12 years of professional planning experience acceptable to the board; or, (d) for a period of eight years only subsequent to July 1, 1963, a degree in a *closely related course of study such as architecture, landscape architecture, engineering*, law, sociology, geography, public administration, political science or economics, with a minimum of 18 credit hours in recognized planning subjects included as part of or in addition to such courses of study in an accredited college or university, plus a minimum of five years experience in the full-time practice of professional planning. (Emphasis ours). In addition the applicant must obtain a passing grade as determined by the board upon a qualifying examination to be prepared by the board or by experts chosen by it, and given annually. The examination is to cover such subject matters as (a) history of urban, rural, and regional planning; (b) fundamental theories, research methods and common basic standards in professional planning; (c) administrative and legal problems, instruments and methods; (d) current planning design and techniques; (e) history, principles and requirements of planning and zoning procedures in the State of New Jersey. *N.J.S.A.* 45:14A-8, 9. A grandfather clause is added by *section* 19 under which, for a period of one year from July 1, 1963, persons having certain listed qualifications may be granted licenses without examination. *N.J.S.A.* 45:14A-19. The clause is not involved in these proceedings.

A "State Board of Professional Planners" is established consisting of five members appointed by the Governor, with

the advice and consent of the Senate, who shall be professional planners licensed under the Act. *N.J.S.A.* 45:14A-4. For obvious reasons the members of the first Board are not required to be such licensed planners. But they must be members of *the* recognized organization representing professional planners in the State, as well as United States citizens, residents of New Jersey, with at least five years active experience in professional planning, and of good standing in the profession. *N.J.S.A.* 45:14A-4, 5, 20. (Note that the reference in *section* 20 to *section* 3 of the act probably should be to *section* 4.) The Board is given power to make and enforce rules and regulations necessary to carry out the provisions of the act, and to discipline licensed planners for their violation. *N.J.S.A.* 45:14A-4, 15.

II.

The Section of the Act Under Attack

When the statute was adopted by the Legislature it contained *section* 11 consisting of five paragraphs dealing generally with the license-qualifying examinations. The fourth paragraph provides:

> "The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect of New Jersey."

This paragraph was not included in the bill, A. 546, as introduced in 1961 under the sponsorship of the New Jersey Chapter of the American Institute of Planners. It was inserted, however, (along with section 3, *N.J.S.A.* 45:14A-3 and part of *section* 17, *N.J.S.A.* 45:14A-17, to be more specifically referred to hereafter in connection with the discussion of severability of *section* 11), in order to exempt the described engineers, land surveyors and architects from the

obligation of satisfying the qualifications required of other aspiring planners and from the burden of taking and passing the licensing examination.

Plaintiffs challenge the validity of the fourth paragraph, saying it denies them equal protection of the law contrary to the guaranties of the *Federal Constitution* and the *New Jersey Constitution*. More specifically they say that by requiring all persons except licensed professional engineers, licensed land surveyors and registered architects of this State to possess certain educational qualifications and experience in the field of planning, and to take and pass an examination on subjects related to that field in order to be licensed as a practitioner of planning, the legislation violates the cited constitutional strictures against discrimination.

III.

Severability

Plaintiffs' treatment of the statute is not limited to the alleged unconstitutionality of the fourth paragraph of *section* 11. They assert that upon being adjudged invalid the paragraph is severable from the statute and the remainder thereof may stand as a complete and independent legislative enactment regulating the practice of professional planning. In order to set out the primary constitutional issue in the case in bold relief we shall deal first with the problem of severability.

Ordinarily if a part of a statute is adjudged invalid and the remainder can stand independently without conflict with the overall basic purpose of the Legislature, it will be allowed to do so. *N.J.S.A.* 1:1-10. But if it appears that the objectionable feature cannot be excised without substantial impairment of or conflict with the overall legislative purpose, the entire enactment must fall. *Ahto* v. *Weaver*, 39 *N.J.* 418, 427 (1963); *Angermeier* v. *Sea Girt*, 27 *N.J.* 298,

311 (1958). Whenever the provisions of an act are dependent, conditioned or connected in such fashion as to warrant the belief that the lawmakers intended them to exist as a whole, they must stand or fall together. *State, Van Cleef, pros.*, v. *Comm'rs of Sts. and Sewers of New Brunswick*, 38 *N. J. L.* 320 (*Sup. Ct.* 1876). It is not enough in itself that the invalid portion or section of a statute is excisable in fact; additionally, in such case, a clear intention must appear on the part of the Legislature to authorize severability and consequent continued viability of the statute. *Garner* v. *Union Tp.*, 55 *N. J. Super.* 523 (*Law Div.* 1959). In this connection the judicial branch of the government is conscious that the doctrine of severability must be applied with caution; it must be sensitive to the fact that in enforcing valid elements of a statute which contains invalid elements, there is danger of usurpation of legislative power. *Washington National Ins. Co.* v. *Board of Review*, 1 *N. J.* 545, 556 (1949).

In this instance we are satisfied from the legislative history and from an examination of the statute as a whole that the Legislature would not have adopted it without the exemption provision contained in the fourth paragraph of *section* 11.

The first proposed planners' licensing act to be presented to our Legislature was introduced in 1958 (A. 206) under the sponsorship of the American Institute of Planners. It did not contain an exemption for engineers, land surveyors and architects. There is no doubt it encountered opposition from those groups, particularly from the New Jersey Society of Professional Engineers. It was not adopted. Thereafter futile attempts were made in 1959 and 1960 to procure passage of such legislation. Then in 1961 two bills were introduced, one sponsored by the Society of Professional Engineers (A. 483), and the other by the Institute of Planners. (A. 546). The bills continued the conflict between the professions. The engineers' bill provided for the registra-

tion and licensing of professional planners, and created an administrative and examining board to carry out its provisions. The board was to consist of five engineers, one of whom would also be a licensed land surveyor, and one a licensed professional planner. The planners' bill called for establishment of a separate board of licensed professional planners. The statement originally attached said among other things:

> "Planning is a distinct, separate profession, which requires specialized training. It is not a branch of engineering, architecture, or any other profession. Thirty leading colleges and universities award degrees in planning, and more than 400 New Jersey municipalities and 15 counties have planning boards."

As we were advised at oral argument, it became apparent that neither bill could pass to the exclusion of the other. The engineers, land surveyors and architects seemed to feel there was no need at all to regard planning as a distinct profession and to require licenses for planners as such. But if the Legislature disagreed and found justification for such regulation, then they felt that persons in their professions who took and passed the examinations for licenses to practice in their respective fields, as already required by separate statutes, ought to receive automatic licensure under the planners' act. In 1962 an obvious compromise in the form of the present statute was submitted and adopted. It became *chapter* 109, *L.* 1962.

The statement apparently as amended by the *Senate Committee*, and attached to the compromise bill, contained some significant departures from the one on the original planners' bill. The paragraph quoted above was dropped and the following was substituted:

> "Planning is a profession, which requires specialized training."

Note that planning is no longer described as a "separate and distinct" profession; further, that the description of planning as not being a "branch of engineering, architecture or any other profession" is excised. Moreover, the statement contains a reference to the fact that special provisions are included for the licensing of persons with degrees "in related fields" and for "all licensed professional engineers, land surveyors and registered architects of the State of New Jersey." And it says that the bill "has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel."

Differences in the act as adopted and the bill, A. 546, as submitted by the Institute of Planners are significant on the issue of severability. We have set forth above the very general definition of professional planning in *section* 2 of the statute as enacted. The term was defined in part in A. 546 as:

> "The term includes the collection, analysis, evaluation and presentation of facts, trends and proposals, and the development of integrated plans for both future growth and renewal, by means of statistical analysis, reports, graphs, diagrams, maps, charts, and other means of graphical representation; it also includes the consideration of population and income trends, public finance, inter-governmental relationships, existing and future land use patterns and need, public and community facilities, capital improvement programs, circulation and transportation, conservation of resources and open spaces, and such other matters as are relevant to the appropriate development and administration of the aforementioned."

This definition was intended to highlight the claim by the planners that their concern is with the socio-economic as well as physical aspects of development of governmental

units, and that other disciplines such as engineering, architecture and land surveying occupy a secondary role, simply supplying some component data for use of the planners in formulating a master plan for the orderly development of the particular community. The Senate Committee dropped the above quoted portion of the definition of planning from the statute as enacted.

In the statute itself are examples of belief and recognition by the Legislature that engineering, land surveying, architecture and planning are allied disciplines, and that those engineers, surveyors and architects who already have passed or thereafter pass a State-imposed qualifying examination in their professions ought to be regarded as *prima facie* competent to practice planning, and therefore to be licensed in that field if they desire, without being subject to another examination. *Section* 2 says in part:

> "The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey." *N.J.S.A.* 45:14A-2.

Section 3 provides:

> "Nothing in this act shall be construed to prohibit any licensed professional engineer, land surveyor or registered architect in the State of New Jersey from engaging in any or all of the functions or performing any or all of the services set forth in this act, provided however that such persons shall not hold themselves out as professional planners or planners." *N.J.S.A.* 45:14A-3.

Since the Legislature recognizes their competency to practice planning, if such engineers, land surveyors or architects wish to hold themselves out as professional planners, they may obtain the license to do so simply by

applying for it and paying the required fee. *N.J.S.A.* 45:14*A*-11.

The history of the act and its evolution into the form which made it acceptable legislatively demonstrate plainly that the establishment of prerequisites for licensing planners, and the provisions for exemption therefrom of licensed engineers, land surveyors and registered architects were intended to be interdependent and to exist as a whole, or not at all. In addition to the matters noted above, the record shows that at the time of adoption of the statute, in spite of the heavy and growing demand for planners, there were only a few hundred persons engaged in planning in New Jersey, whom the plaintiff Institute of Planners considered qualified to be professional planners as the Institute would have the Legislature define and limit the practice. By making automatic licensure available to over 12,000 New Jersey licensed engineers, land surveyors and registered architects who might wish to enter the field or to continue practicing therein, the lawmakers clearly revealed they were opposed to granting a monopoly to those few who could qualify immediately under the form of statute originally proposed by the Institute. Thus, if the exemption above were to fall the legislative aversion to the few and its preference for the many would be frustrated. In our judgment the conclusion is inescapable that the statute would not have been adopted without the exemption of the fourth paragraph of *section* 11. Moreover, the record and the oral arguments of the parties reveal that in its ultimate form the act was a compromise. It was accepted as such by the partisans of the planners on the one hand and the engineers, land surveyors and architects on the other, and enacted by the Legislature on that basis. Under the circumstances, even if the exemption provision now challenged by the plaintiffs were unconstitutional, the suggestion of its severability from the remainder of the act scarcely would strike a sympathic chord. We are satisfied that if the exemption provision were invalid, it would be usurpation of the legislative province for a court

to allow the remainder of the enactment to stand without it. *Washington National Ins. Co.* v. *Board of Review*, 1 *N. J.* 545, 556 (1949). Therefore whether the entire act here shall stand or fall depends upon our determination of the constitutionality of the fourth paragraph of *section* 11, to which we now turn.

IV.

The Constitutionality of the fourth paragraph of section 11, chapter 109, L. 1962.

In essence this statute, *chapter* 109 of the *Laws* of 1962, is another occupational licensing act. It has been suggested, not without reason, that such enactments have become epidemic in our economic life. As was the case in *The Independent Electricians & Electrical Contractors' Association, et als* v. *New Jersey Board of Examiners of Electrical Contractors, N. J.*, (1967), the legislative history recounted above shows that the agitation for the legislation came, as so frequently happens, from those who describe themselves as professional planners, and not because of any public demand. It seems fair to say also that their principal motivation was self-interest rather than public interest. See, *Note*, 14 *Stan. L. Rev.* 533, 535-537 (1962); *Silverman, Bennett & Lechliter, Control by Licensing Over Entry Into the Market*, 8 *Law and Contemp. Problems* 234 (1941); *Gellhorn, Individual Freedom and Governmental Restraints* 109 (1956). The work of those who style themselves professional planners is pretty much limited to activities in behalf of public entities, or governmental units, such as municipalities, counties and the State. And primarily they concern themselves with the fashioning of plans and master plans for the orderly and coordinated physical development and redevelopment of land areas in such units or in a combination of them.

The argument has been advanced persuasively that there is no public need for the exercise of the regulatory police

power in this occupational area. It is said that the governmental units (which are practically the only clients of the planners), unlike the ordinary member of the public, are sufficiently sophisticated to know the individuals and organizations that are competent or experienced in planning and redevelopment. Moreover, defendants point out that selection of planners has been made the subject of executive regulation at various levels of government, state and federal, which makes it extremely unlikely that an unqualified person representing himself as a planner would be employed. But there is no doubt that under its broad police power the State may regulate occupations, professions and businesses in the interest of the public welfare. If pursuit of a particular occupation or the practice of any of the learned or statutory professions can be said to have a connection with or an impact upon the public weal, and there is any reasonable basis for regulation or control thereof to protect or preserve the particular public interest affected, the Legislature may do so constitutionally, so long as the means adopted are not arbitrary and are reasonably related to the felt public need. If the need is not wholly illusory and the regulation imposed is reasonably calculated to satisfy the need, the wisdom or unwisdom of the particular form of regulation cannot be a matter of judicial concern. If the subject is within the police power of the State, even debatable questions as to reasonableness of the means employed are not for the courts but for the Legislature. *Sproles* v. *Binford*, 286 *U. S.* 374, 388-89, 76 *L. ed.* 1167, 1178-79 (1932); *Atchison, Topeka & Santa Fe R. Co.* v. *Matthews*, 174 *U. S.* 96, 103, 43 *L. ed.* 909, 912. (1899); *Abelson's, Inc.* v. *N. J. State Board of Optometrists*, 5 *N. J.* 412, 420 (1950); 16 *Am. Jur. 2d, Constitutional Law*, § 323 (1964).

The public interest and welfare are substantially involved in the creation of sound master plans for the orderly development and redevelopment of land areas in municipalities, counties, regions and the State, as well as in the effectuation of such plans in an orderly physical and financially

feasible manner. Expenditures of large sums of public money frequently are required over considerable periods of time in pursuing the planned ends, and the welfare, tranquility and ordered living of the citizen are promoted by the achievement of those ends. Plainly it is within the police power of the State to enact reasonable standard regulatory or licensing measures to insure that all persons who offer their services for such planning purposes are *prima facie* qualified to perform them. Exercise of that power cannot be banned by the judiciary because some governmental units may know certain competent planners, or because some of the units have previously established qualification standards of their own for planners who seek local employment. For these reasons we put aside the suggestion—not too strenuously advanced—of the individual intervener-defendants that the statute in its entirety is an unreasonable exercise of the police power, and therefore unconstitutional.

The more specific issue vigorously argued by plaintiffs is that by exempting licensed professional engineers, land surveyors and registered architects from the educational requirements and examination for a planners' license, while requiring all other persons, particularly those educated for and trained in planning, to satisfy the requirements, the statute transgresses the constitutional mandate for equal protection of the law. They urge that all persons have a common right to aspire to and qualify for the practice of a profession or occupation, and are entitled to be treated equally with respect to State-imposed tests for license to do so. And they contend that creation of the exempt separate class of engineers, land surveyors and architects, and authorising automatic licensure for such persons violates the basic charter right of all other persons not to be treated in discriminatory fashion.

As we have said, if some reasonable basis exists for the conclusion that regulation of a particular occupation is justifiable in the public interest—as it does here—the courts

will accept the decision of the Legislature to do so. Moreover, judicial acceptance of the legislative decision to regulate and to license is not conditioned upon a mechanistic requirement that all persons or classes of persons who engage in the occupation must be made subject to or treated alike in the statutory implementation of the decision. The constitutional mandate for equal protection does not mean that the regulation must reach every class to which it might be applied—that the Legislature must regulate all or none. The Legislature has wide discretion in the creation of or recognition of classes for different treatment. Equal protection does not require that all persons be dealt with identically. If there is some reasonable basis for the recognition of separate classes, and the disparate treatment of the classes has a rational relation to the object sought to be achieved by the lawmakers, the constitution is not offended. The transgression arises only when the classification rests upon grounds wholly irrevelant to achievement of the State's objective; the separate treatment must admit of but one conclusion beyond a rational doubt, *i.e.*, that the basis therefor is arbitrary and unreasonable, and without relevance to the legislative goal. *Sproles* v. *Binford, supra; Atchison, Topeka, & Santa Fe R. Co.* v. *Matthews, supra; Two Guys from Harrison, Inc.* v. *Furman*, 32 *N. J.* 199 (1960); *N. J. Restaurant Ass'n* v. *Holderman*, 24 *N. J.* 295 (1957); *Washington National Ins. Co.* v. *Board of Review* 1 *N. J.* 545 (1949); *Robson* v. *Rodriquez*, 26 *N. J.* 517 (1958).

Equal protection is not denied because a regulatory statute might have gone farther than it did, or might have included some persons or classes of persons who were excluded. Regulatory need in a particular field may appear to the legislative mind in different dimensions and proportions; as more acute in one area than in another. Consequently the reform may proceed one step at a time, addressing itself to the aspect of the problem w ich seems the most pressing. The Legislature may feel that a sufficiently identifiable group or class of people operating partly or wholly in

the field under consideration and already subject to some regulation do not present the same problem as those seeking to practice in the field without having met any publicly imposed standards of competence. In short, equal protection does not demand immediate logical tidiness; nor is it violated because the legislation as enacted does not bring about the full reform or result intended to be produced. In an area of many competing pressures the constitution is satisfied if the Legislature, in responding to what it conceived to be living facts calling for regulation, did not disregard reason in drawing its lines. That those lines might have been drawn more suitably in light of the whole problem is not a matter for judicial re-examination. Classification is a perennial and difficult problem, capable of no doctrinaire solution. Basically the solution resides in the legislative domain and the judiciary will not intrude unless the classes established for separate treatment represent invidious discrimination, that is, treatment which has no rational basis in relation to the specific objective of the regulatory legislation. *Joseph E. Seagram & Sons* v. *Hostetter*, 348 *U. S.* 35, 16 *L. ed.* 2d 336, 347 (1966); *Ferguson* v. *Skrupa*, 372 *U. S.* 726, 10 *L. ed* 2d 93 (1963); *Williamson* v. *Lee Optical of Okla.*, 348 *U. S.* 483, 489, 99 *L. ed.* 563, 573 (1955); *Sproles* v. *Binford, supra; Roschen* v. *Ward*, 279 *U. S.* 337, 339, 73 *L. ed.* 722, 729 (1929); *Atchison, Topeka & Santa Fe R. Co.* v. *Matthews, supra*, 174 *U.S.* at 104-105, 43 *L. ed* at 913; *McNaughton* v. *Johnson*, 242 *U. S.* 344, 61 *L. ed.* 352 (1917); *Shelton College* v. *State Bd. of Educ.*, — *N. J.* — (1967); *David* v. *Vesta Co.*, 45 *N. J.* 301, 314-316 (1965); *Two Guys from Harrison, Inc.* v. *Furman, supra*, 32 *N. J.* at 218. These principles provide the tests for examination of the merit of challenges to the validity of statutory classifications and to the disparate treatment of the classes established.

In the present instance the Legislature, in answer to solicitation over a long period of time, decided that the public interest and welfare would be served in some measure by the imposition of certain academic, experiential and licen-

sure requirements upon persons who wish to engage in professional planning. In the statutory implementation of that decision the lawmakers declined to accept the definition of planning proposed by the American Institute of Planners. The excluded portion of the definition put emphasis on what the Institute calls the socio-economic aspects of planning, knowledge of which it claims invests the occupation with such distinct and individual characteristics as to warrant acceptance, treatment and licensing of planning as a statutory profession, uniquely separate from any other profession. Instead the lawmakers defined the practice in general terms related for the most part to long standing statutes concerning activities involving fashioning of master plans for the orderly physical development of municipal, county and state units. A permissible inference from the record is that the lawmakers were aware that over the years persons who were qualified and licensed by the State in other disciplines, such as engineering, architecture and to a lesser extent land surveying, had been preparing such master plans.

In establishing the class of persons who would be exempt from the requirements laid down for a planner's license, it should be noted that not all engineers, land surveyors and architects were included. The exemption covers only those who meet the qualifications, pass the examination and obtain the license required by the statute regulating admission to practice his particular profession, be it engineering, land surveying or architecture. Each one of these regulatory statutes sets out the general nature of the functions of each profession, the educational requirements, and the requirement for successful completion of a licensing examination. See *N.J.S.A.* 45:3-1 *et seq.* for architects; *N.J.S.A.* 45:8-27 *et seq.* for engineers and land surveyors. It is obvious from the professional planners act now before us that the Legislature considered engineering, architecture, and land surveying as sciences which are closely related to planning, and that those who become licensed in the former

ought to be considered *prima facie* competent to pursue the latter. To illustrate: *section* 9, *N.J.S.A.* 45:14*A*-9, specifically refers to architecture, landscape architecture and engineering as "closely related course[s] of study"; the act specifies also that such licensed persons may practice planning even though they do not apply for a planner's license, so long as they do not hold themselves out as professional planners, *section* 3, *N.J.S.A.* 45:14*A*-3; and *section* 17, *N.J.S.A.* 45:14*A*-17, ordains that no such licensed person presently holding an appointment by any governmental unit as a planner shall be removed from his position because not licensed as a professional planner.

A few references to the statutes relating to the licensing of engineers, land surveyors and architects furnish probable reasons for the legislative attitude. For example, the function of the licensed professional engineer is defined to be "application of special knowledge of the mathematical, physical and engineering sciences to * * * consultation, investigation, evaluation, planning, design or general supervision of construction or operation * * * in connection with any * * * engineering or industrial project." *N.J.S.A.* 45:8-28(*b*). It is worthy of note in this connection that the current curriculum catalogue for the engineering courses at Newark College of Engineering requires a course in "Elements of Industrial Growth"—a study of "social, economic, cultural and political forces," and provides electives in planning subjects. The civil engineering curriculum at Rutgers, The State University, requires a course in "Development of Western Civilization" and at least 12 credit hours in "Humanities and Social Studies."

The statutory license examination for architects is required to encompass, among other subjects, site planning, history and theory of architecture, and professional administration. *N.J.S.A.* 45:3-5. Here too, it may be noted that the current architecture curriculum of Princeton University includes a course in "City Planning." At Massachusetts In-

stitute of Technology the curriculum in architecture contains courses in "City Planning" and "Urban Social Structure & Process."

The function of the licensed land surveyor is described in the pertinent statute as "Surveying of areas for their correct determination and description and for conveyancing, and for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof, and such topographical survey and land development as is incidental to the land survey." *N.J.S.A.* 45:8-28(*e*).

It is relevant to the above observations to point out that the professional planners act suggests that the examining board would look with approval upon a college of university curriculum offering courses in principles of land use, history of city planning, planning project design, and planning law and administration. *N.J.S.A.* 45:14*A*-9.

There is no substantial dispute in the testimony of the expert witnesses who appeared on both sides of the case that there is a definite interrelationship among the disciplines of engineering, architecture, landscape architecture, land surveying and planning. A few statements of various witnesses are illustrative: "The practice of architecture and engineering and planning overlap in all cases. And it is very difficult to isolate one from the other concisely and clearly"; one field overlaps the other "all the time"; "• • • one definitely depends on and is interrelated to the other"; "• • • each one of these professionals almost of necessity has to get in the hair of the other to some extent. I would say I dread the day within my own profession if we started to delineate, try to delineate in some fine fashion the area in which each type of engineer could operate. I think this would lead to chaos and jurisdictional battles and problems. It would be most unfortunate. To some extent the same sort of relationship I think exists between the professions [of engineering, architecture and land surveying] you have enumerated, and there are large areas of overlapping"; un-

questionably the three professions are "related to the practice of city planning."

Plaintiff's experts concede that historically city planning had its origin and its early development "with architects, engineers and landscape architects. That is where we got our original planners"; "they were really planners"; they "came out of" architecture, engineering and landscape architecture. One of defendants' witnesses, an eminently qualified engineer, said:

> "Actually engineers have been the real planners for centuries in planning of developments and civil engineering was the outgrowth of what used to be military engineering, because all engineering was in one package and it was handled generally by the military for their purposes.
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> This continues today to be a responsibility in the field of engineering. I think they are responsible for a good bit of the planning that has been done. Some of the boys in the engineering profession were largely responsible in the formation of the American Institute of Planners, and they participate in it rather heavily."

The text writers support the view that city planning had and has its roots in the three professions recognized by our Legislature. For example, *McQuillin*, in 1 *Municipal Corporations* 432 (1949) says:

> "The first instance of a comprehensive city plan was that of Christopher Wren for London following the destructive fire of 1666, but it was never adopted. In 1682 a plan for Philadelphia was drafted by civil engineers and surveyors appointed by William Penn. The plan adopted for the national capital was prepared by Major Pierre Charles L'Enfant, a French army engineer employed by Washington, who presented a scheme

at once comprehensive and attractive, and the observance of which in the main has enabled the national capital to develop as one among the beautiful cities of the world."

Further:

"As knowing how to do a thing before it is attempted is needed, it is plain that satisfactory city planning and zoning must be the result of the united efforts of the applied talents working in harmony of the various professions, arts and sciences, particularly that of the civil engineer, the architect, the landscape architect, or designer, the economist and the lawyer." *Id.* at 434-435.

See also, *James, Land Planning in the United States for the City, State and Nation* (1926), where it is pointed out in *chapter* 3 that the concept of city planning in the modern sense was first introduced at the Chicago World's Fair in 1893, and that the exposition was the joint effort of architects, landscape architects and engineers.

Plaintiffs' witnesses assert that the modern "new breed" planner is one step removed from the engineers, architects and land surveyors. His claimed separate expertise in the preparation of master plans, they say, comes from knowledge of and training in community studies, which include preparation of base maps, land use surveys, housing conditions, review of business uses, environmental studies in neighborhoods, community facilities, population and economic surveys. This expertise is applied to the conditions and circumstances of a particular community, and a master plan for its physical development is evolved. Thus, plaintiffs say, planners operate on the topmost echelon of the process which in the ultimate produces the comprehensive master plan; at that level they apply their understanding of the operation of socio-economic forces to the component data prepared or compiled by the other professional groups

such as engineers, architects and land surveyors, as well as lawyers, financial experts, and experienced men of public affairs, in order to fashion what they believe is the appropriate master plan.

There is no doubt that in more recent years community planning has drawn into its creative work social and economic considerations to a greater extent than in its formative period. And it may be that in the course of time the legislature will conclude that such a high degree of specialized expertise has come into being in planning that the practice ought to be treated as uniquely separate from and independent of all other professional disciplines. In this event, in its wisdom the Legislature may withdraw thereafter the grant of automatic licensure as professional planners from licensed engineers, land surveyors and registered architects. In this connection, however, the evidence is uncontradicted that at present there is a shortage of persons engaging in planning, whatever may be their professional, educational or experiential background. According to the Executive Director of the American Society of Planning Officials, the Society advertised about 1300 professional planning jobs during 1965, and at the end of the year about 400 of them were open and unfilled. That number was higher than at the end of 1964, which in turn was higher than in 1963. It may well be that the Legislature felt the need could be alleviated by admitting to the practice of planning without examination those persons who had already qualified for licenses in the related professional fields of engineering, land surveying and architecture. Under all of the circumstances it cannot be said reasonably that planning did not have its gestative stirrings and its early and continued practice in the three exempted disciplines, particularly in engineering and architecture. Nor can it be said on the record before us that it was wholly arbitrary and without reasonable basis for the Legislature to regard licensed members of the three professions as possessing sufficient minimal qualifications for

planning to warrant treatment as a distinct class and to grant them exemption from the licensing requirements of the professional planners act, if they wish to practice in that field. *Cf. Watson* v. *Maryland*, 218 *U. S.* 173, 54 *L. ed.* 987 (1910); *Williamson* v. *Lee Optical of Okla., supra; McNaughton* v. *Johnson, supra; Sproles* v. *Binford, supra; Peet Stock Remedy Co.* v. *McMullen*, 33 *F. 2d* 669 (8th *Cir.* 1929).

It is not for a court to resolve the factual controversy projected by the testimony here. The judicial function ends when evidence appears from which the Legislature could have concluded reasonably in 1962 that exemption of licensed professional engineers, land surveyors and registered architects from licensure requirement for planners was rationally related to the basic objective of the planning act. The wisdom or unwisdom of that decision is not for us. We do not sit as a superlegislature to decide whether the classification is "unwise, improvident or out of harmony with a particular school of thought." *Ferguson* v. *Skrupa*, 372 *U. S.* 726, 731-32, 10 *L. ed. 2d* 93, 98, 9 *A. L. R. 2d* 1347 (1963). The burden of establishing that it contravenes the equal protection clause rests upon the plaintiffs and it is a heavy one.

The statute comes into court with a strong presumption of constitutionality. In addition, where the challenge is based upon an alleged denial of equal protection, it must contend with the undoubted wide discretion of the legislature to classify for regulatory purposes, limited only by the injunction not to act without a reasonable basis in establishing the classifications. Moreover, the legislature conscious of the desirability of regulation in a particular occupation or profession may sense an urgency in one area, while in another it may reasonably have a feeling of absence of immediacy and that existing regulatory measures are adequate in view of the state of the art. It is a commonplace of regulation of business and professional practices that the legislature "may limit its action upon a

decision to proceed cautiously, step by step, or because of practical exigencies * * * or because of 'some substantial consideration of public policy or convenience or the service of the general welfare.'" *N. J. Restaurant Ass'n.* v. *Holderman*, 24 *N. J.* 295, 300 (1957); *David* v. *Vesta Co.*, *supra.*

The notion that the lawmakers felt the desirability of some control of the developing practice of community planning must be accepted. It is reasonable also to conclude from the record that an awareness existed of the present shortage of persons engaged in the practice. Further, the evidence submitted warrants the inference that the legislators were aware of the historical part played by the engineers, land surveyors and architects in the development of community planning, and the continuing practice of such planning as an incident of their professional work. All of these circumstances suggest the view that the legislature felt the current need in the field of community planning was for regulation of those persons who wished to engage in the practice but who had not demonstrated to any public agency that they had sufficient qualifications to do so. The circumstances suggest also satisfaction on the part of the lawmakers that achievement of licensure in one of the three named professions demonstrates possession of sufficient minimal competence to engage in planning to warrant treating such license holders as a separate class and exempting them from the requirements imposed upon those who have no license of any kind to practice planning. Under the principles of law laid down for the control of judicial review, we cannot say that the exempt class created by the fourth paragraph of *section* 11 is purely arbitrary and without any rational relation to the statutory objective of regulation of the planning profession.

Accordingly the challenged portions of the professional planners act cannot be declared violative of the constitutional mandate for equal protection of the laws. The judg-

ment of the trial court is reversed, and the restraint imposed upon the New Jersey State Board of Professional Planners respecting the issuance of planners' licenses to those licensed in the exempt professions is vacated.

SUPREME COURT OF NEW JERSEY
A 55 SEPTEMBER TERM 1966

HALL, J. (dissenting in part and concurring in part)

I agree with the trial court's determination, that the portion of *N.J.S.A.* 45:14A-11 in question is unconstitutional as violative of equal protection and therefore dissent from the majority's contrary conclusion. I concur, however, with the holding of the majority that this portion is not severable. My view consequently is that *L.* 1962, *c.* 109, *N.J.S.A.* 45:14A-1, *et seq.*, must fall in its entirety and I would modify the trial court's declaratory judgment accordingly.

APPENDIX B

The New Jersey Professional Planners Licensing Act

45:14A-1. License required to practice professional planning

In order to safeguard life, health and property, and promote the public welfare, any person practicing or offering to practice professional planning in this State shall hereafter be required to submit evidence that he is qualified so to practice and shall be licensed as hereinafter provided. After the effective date of this act, it shall be unlawful for any person to practice or to offer to practice professional planning in this State, or to use the title "professional planner" or any other title, sign, card or device in such manner as to tend to convey the impression that such person is practicing professional planning or is a professional planner, unless such person is duly licensed under the provisions of this act. Every holder of a license shall display it in a conspicuous place in his principal office, place of business or employment.

No corporation, firm, partnership or association shall be granted a license under this act. No corporation, firm, partnership or association shall use or assume a name involving the word "planners" or "planning," or any modification or derivative of such terms, unless an executive officer, if a corporation, or a member, if a firm, partnership or association, shall be a licensed professional planner of the State of New Jersey.

No corporation, firm, partnership or association shall practice or offer to practice professional planning in this State unless the person or persons in responsible charge of professional planning work shall be so licensed to practice in this State. The person or persons carrying on the actual practice of professional planning on behalf of or designated as "professional planners," with or without qualifying or characterizing words, by any such corpora-

tions, firms, partnerships, or associations, shall be licensed to practice planning as provided in this act.

Nothing in this act shall be construed as requiring licensing for the purpose of practicing professional planning by any person, firm, or corporation with relation to property owned or leased by such person, firm, or corporation, unless otherwise required by statute or ordinance. L.1962, c. 109, §1.

45:14A-2. Definitions

(a) The term "professional planner" as used in this act shall mean a person who engages in the practice of professional planning as hereinafter defined.

(b) The term "planner-in-training" as used in this act shall mean a person who is a potential candidate for license as a professional planner who is a graduate in an approved planning curriculum of 4 years or more from a school or college accredited by the board as of satisfactory standing; or a person who, in lieu of such graduation, has had 4 years or more of experience in planning work of a character satisfactory to the board, and who, in addition, has successfully passed an examination in the fundamental planning subjects, as defined elsewhere herein.

(c) The term "practice of professional planning" within the meaning and intent of this act shall mean the administration, advising, consultation or performance of professional work in the development of master plans in accordance with the provisions of chapters 27 and 55 of Title 40 of the Revised Statutes, as amended and supplemented; and other professional planning services related thereto intended primarily to guide governmental policy for the assurance of the orderly and co-ordinated development of municipal, county, regional, and metropolitan land areas, and the State or portions thereof. The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional

engineer, land surveyor or registered architect of the State of New Jersey.

(d) The term "board" as used in this act shall mean the State Board of Professional Planners.

(e) The term "responsible charge of professional planning work" as used in this act shall mean such degree of competence and accountability gained by education and experience of a grade and character as is sufficient to qualify an individual to personally and independently engage in and be entrusted with the work involved in the practice of professional planning. L.1962, c. 109, §2.

45:14A-3. Exemption of licensed professional engineers, land surveyors and registered architects

Nothing in this act shall be construed to prohibit any licensed professional engineer, land surveyor or registered architect in the State of New Jersey from engaging in any or all of the functions or performing any or all of the services set forth in this act, provided however that such persons shall not hold themselves out as professional planners or planners. L.1962, c. 109, §3.

45:14A-9. Qualifications for license

The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for license as a professional planner.

(a) The applicant for license as a professional planner shall:

(1) Be of good moral character;

(2) Be a citizen of the United States or have declared his intention to become a citizen of the United States;

(3) Pass the required examinations.

(b) The applicant for license as a professional planner shall submit the following minimum educational and experience qualifications:

(1) A graduate degree in professional planning from an accredited college or university in a curriculum offering instruction in such recognized planning subjects as principles of land use planning, history of city planning, planning project design, and planning law and administration, as shall be approved by the board; with a minimum of 3 years experience in the full time practice of professional planning; or

(2) An undergraduate degree from an accredited college or university in a curriculum offering a major or option comprising a minimum of 21 credit hours in such recognized planning subjects as shall be approved by the board; with a minimum of 4 years experience in the full-time practice of professional planning; or

(3) Graduation from a secondary school and at least 12 years of professional planning experience acceptable to the board; or

(4) For a period of 8 years only subsequent to July 1, 1963, a degree in a closely related course of study such as architecture, landscape architecture, engineering, law, sociology, geography, public administration, political science or economics, with a minimum of 18 credit hours in recognized planning subjects included as part of or in addition to such courses of study in an accredited college or university, with a minimum of 5 years experience in the full-time practice of professional planning.

(c) The applicant for license as a professional planner shall obtain a passing grade, as determined by the board, upon a qualifying written examination. Such examination shall comprise subject matter covering:

(1) History of urban, rural, and regional planning.

(2) Fundamental theories, research methods and common basic standards in professional planning.

(3) Administrative and legal problems, instruments and methods.

(4) Current planning design and techniques.

(5) Histofy, principles and requirements of planning and zoning procedures in the State of New Jersey.

In considering the qualifications of applicants, the teaching of recognized planning subjects may be construed as planning experience.

Any person having the necessary qualifications prescribed in this act to entitle him to license as a professional planner shall be eligible for such license even though he may not be practicing his profession at the time of making application. L.1962, c. 109, §9.

45:14A-10. Qualifications for training certificate

The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for a certificate of registration as a planner-in-training.

(a) The applicant for certificate of registration as planner-in-training shall:

(1) Be of good moral character;

(2) Be a citizen of the United States or have declared his intention to become a citizen of the United States;

(3) Pass the required examinations.

(b) The applicant for certificate of registration as planner-in-training shall present the following minimum qualifications:

(1) Graduation in an approved course in planning of 4 years or more from a school or college approved by the board, and a passing grade, as determined by the board, upon a qualifying written examination in the fundamental professional planning subjects; or

(2) A specific record of 4 years or more of active practice in planning work of a character satisfactory to the board, and a passing grade, as determined by the board,

upon a qualifying written examination in the fundamental professional planning subjects.

Any person having the necessary qualifications prescribed in this act to entitle him to a certificate of registration as a planner-in-training shall be eligible for such license even though he may not be practicing his profession at the time of making application. L.1962, c. 109, §10.

45:14A-11. Examinations; issuance of license certificates

Examinations for license as a professional planner of certificate of registration as a planner-in-training shall be offered at least once annually at such times and places as the board shall determine. Such examination shall be prepared by the board or by such qualified experts as the board may choose, and may cover any and all aspects of planning previously described herein. The examinations shall be administered by such qualified expert examiners as may be appointed by the board.

An applicant who has failed to obtain a passing grade in an examination may be examined again upon filing a new application and the payment of the application fee fixed by this act, provided that a period of at least 6 months has elapsed before re-examination.

The board, upon application therefor on its prescribed form and the payment of the application and license fees fixed by this act, may issue a certificate of license as a professional planner without written examination to any person holding a certificate of license as a professional planner issued to him by any State, when the applicant's qualifications meet the requirements of this act and the rules established by the board.

The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect of New Jersey.

Any applicant who has passed the examination and has otherwise qualified hereunder as a professional planner, upon payment of the license fee fixed by this act, shall have a certificate of license issued to him as a professional planner, signed by the president and secretary-director of the board under the seal of the board. The certificate of license shall authorize the practice of the applicant as a "professional planner." Certificates of license shall show the full name of the licensee and shall have a license number. The issuance of a license certificate by this board shall be evidence that the person named therein is entitled to all the rights and privileges of a licensed professional planner while such certificate remains unrevoked or unexpired. L.1962, c. 109, §11.

45:14A-14. License fees; expiration and renewal of certificates; unlicensed practice

The yearly license fee for professional planners shall be $100.00.

License certificates shall expire on May 30 following issuance, renewal or reinstatement, and shall become invalid on that day unless renewed. Licensees shall apply for renewal on or before May 30 of each year. It shall be the duty of the secretary-director of the board to notify all persons licensed under this act of the date of the expiration of their certificates and the amount of the fee that shall be required for their renewal for 1 year; such notice shall be mailed to each licensee at his last post-office address known to the board at least 1 month in advance of the date of expiration of the license. Renewal of any certificate issued under this chapter may be effected at any time during the month of May by the payment of the fee of $100.00.

The failure on the part of the licensee to renew his license annually in the month of May as required shall not deprive such person of the right of renewal during the ensuing year, but the fee to be paid if the license be re-

newed in any month during the license year subsequent to May shall be $110.00 instead of $100.00 and, if the license be not renewed within a year after its expiration, the licensee shall pay a reinstatement fee of $110.00 plus $10.00 for each year in which the licensee is in arrears. One notice to the licensee, by mail, on or before May 15, addressed to his last post-office address known to the board, informing him of his failure to have applied for a renewal of his license certificate, shall constitute legal notification of such delinquency by the board. Continuing to practice as a "professional planner" after the expiration of his license shall render the person so doing liable to all the penalties prescribed for practicing without a license certificate. L.1962, c. 109, §14.

45:14A-15. Revocation or suspension of certificates; grounds; hearing

The board shall have the power to revoke the certificate of license of any professional planner or the certificate of registration of any planner-in-training licensed or registered hereunder who is found guilty by the board of any fraud or deceit in obtaining a certificate of license or a certificate of registration, or of gross negligence, incompetence or misconduct in the practice of professional planning.

Any person may prefer charges of such fraud, deceit, negligence, incompetence, or misconduct against any professional planner or planner-in-training.

Such charges shall be in writing, sworn by the complainant, and submitted to the board. Such charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within 3 months after the date on which they are preferred.

The time and place for such hearing shall be fixed by the board. A copy of the charges, together with a notice of the time and place of hearing shall be personally served

on the accused by the board at least 30 days before the day fixed for the hearing, and in the event that such service cannot be effected 30 days before the hearing, then the date of hearing and determination shall be postponed so long as may be necessary to permit the carrying out of this requirement. At the hearing, the accused shall have the right to appear personally and by counsel, to cross examine witnesses against him, and to produce evidence and witnesses in his defense. If after said hearing 3 or more members of the board vote in favor of finding the accused guilty of any fraud or deceit in obtaining a certificate, or of gross negligence, incompetence or misconduct in the practice of professional planning, the board may revoke or suspend the certificate of license of the accused, or may levy an appropriate fine, not to exceed $500.00 for any specific violation, according to a schedule to be adopted by the board. The board may under circumstances which to it may seem proper, reissue a certificate of license to any person whose certificate has been revoked. L.1962, c. 109, §15.

45:14A-16. Violations; penalties; jurisdiction of courts

Any person, who, hereafter, is not legally authorized to practice professional planning in this State according to the provisions of this act, who shall so practice or offer so to practice in this State, or any person presenting or attempting to file as his own the certificate of license of another, or who shall give false or forged evidence of any kind to the board, or to any member or representative thereof, in obtaining a certificate of license, or who shall falsely impersonate another licensed practitioner of like or different name, or who shall use or attempt to use an expired certificate of license, or an unexpired and revoked certificate of license, or who shall use the title "planner-in-training" without holding a valid certificate of registration issued by the board, or who shall otherwise violate any of the provisions of this act, shall be subject to a penalty of not more than $200.00 for the first offense and

not more than $500.00 for each and every subsequent offense. The penalties provided for by this section shall be collected and enforced by summary proceedings by the State Board of Professional Planners, pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58—1, et seq.).

Every county court and every county district court, within its respective territorial jurisdiction, shall have jurisdiction of actions for penalties under this act. L.1962, c. 109, §16.

45:14A-17. Employment of only licensed professional planners by State or political subdivisions

Hereafter the State, or any department, institution, commission, authority, board or body of the State Government or of any political subdivision thereof shall not appoint or employ any person in responsible charge of any work with the title or job classification of professional planner except a licensed professional planner as the same is defined and as provided in this act.

Notwithstanding the foregoing or any other provision of this act to the contrary, no professional engineer, licensed land surveyor or registered architect of New Jersey presently holding an appointment by the State or by any department, institution, commission, authority, board or body of the State Government or any political subdivision thereof shall be deprived of the right to continue in office, position or employment or to be reappointed to the same office, position, or employment or to be appointed to any other office, position or employment requiring similar qualifications. L.1962, c. 109, §17.

45:14A-18. Employment under civil service laws; employment by persons, firms or corporations of only licensed professional planners

Where professional planners are employed subject to the provisions of the civil service law, the appointment of such person shall be understood to mean and include appoint-

ment after such person has been certified as having satisfactorily passed a civil service examination. No person, firm, association, or corporation engaged in professional planning shall employ a professional planner in responsible charge of any work, within the meaning and intent of this act, other than a duly qualified professional planner who has been licensed pursuant to the provisions of this chapter prior to such employment by the person, firm, association, or corporation so engaged in professional planning; provided, however, that nothing in this act shall apply to any public utility as defined in chapter 2 of Title 48 of the Revised Statutes, or any employee thereof, or to any improvement or proposed improvement made by any such public utility or by any employee of or contractor or agent for said public utility. L.1962, c. 109, §18.

45:14A-19. Licensing of qualified persons for one year period from July 1, 1963, without examination

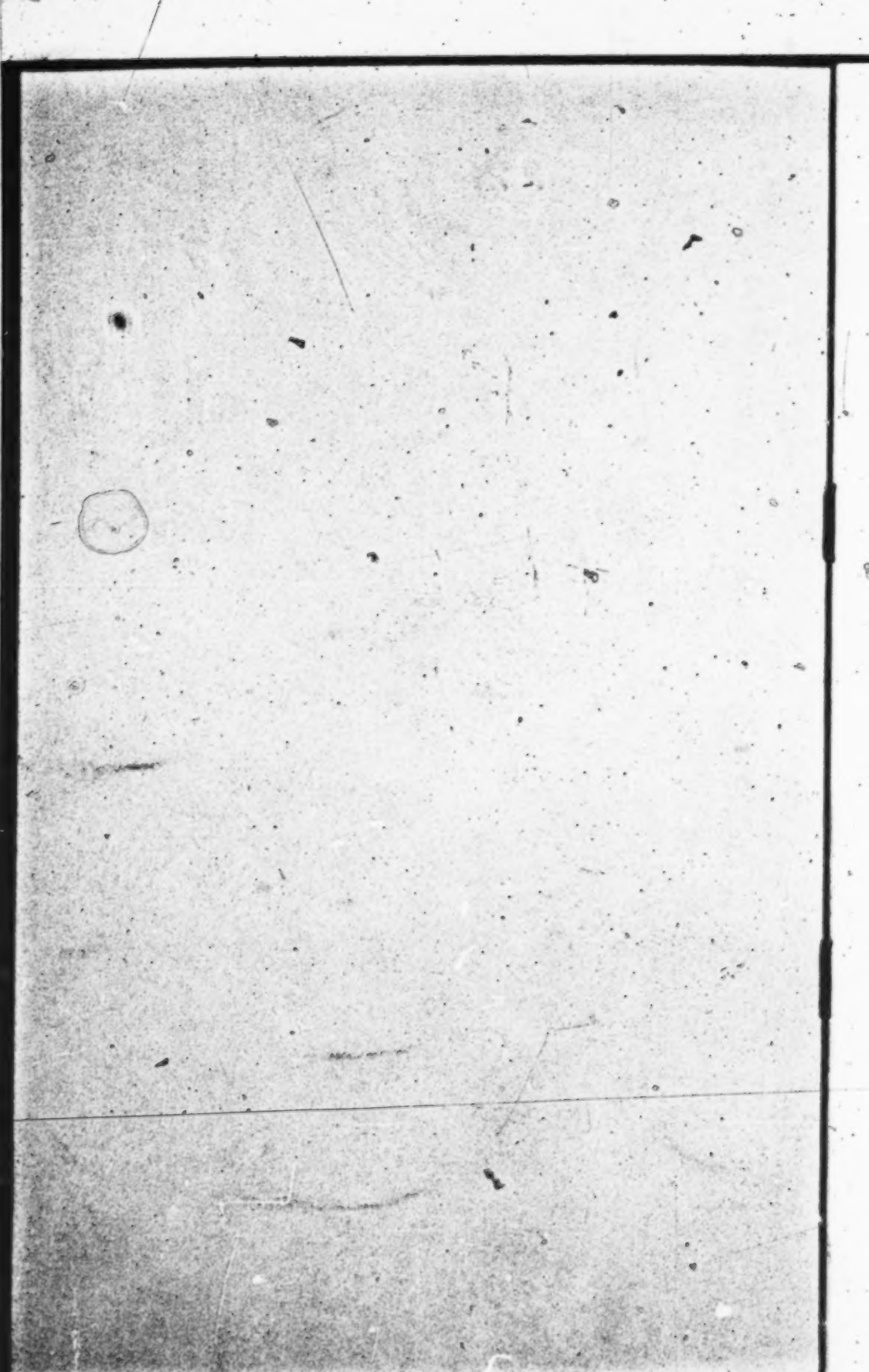
Notwithstanding any other provision of this act, for a period of 1 year from July 1, 1963, any person more than 25 years old and of good moral character shall be entitled to receive a certificate of license as a professional planner if he files an application therefor accompanied by the application fee, the license fee, and evidence that he has:

(a) A college or university degree in planning approved by the board, and that he has been regularly engaged in the practice of professional planning for at least 3 years; or

(b) A college or university degree in a "closely related course of study" as set forth in section 9 of this act, including a minimum of 18 credit hours in recognized planning subjects approved by the board, and that he has been regularly engaged in the practice of professional planning for at least 5 years; or

(c) A diploma from a secondary educational institution, and that he has been regularly engaged in the practice of professional planning of a character acceptable to the board for at least 9 years.

If in the judgment of the board the qualifications of any applicant under the provisions of this section are deemed inadequate to meet the requirements for issuance of a certificate, the board may require the applicant to take an appropriate examination as a basis for its final determination. L.1962, c. 109, §19.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 273

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, etc., *et al.*,

Appellants,

vs.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, *et al.*,

Respondents.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS

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MOTION TO DISMISS

Respondents Lee T. Purcell and Donald R. Goodkind pursuant to Rule 16 move before this Court to dismiss the Appeal taken by the appellants, the New Jersey Chapter of the American Institute of Planners and six individuals, on the ground that the Appeal raises no substantial federal question.

Introductory Statement

Appellants take the present appeal from a judgment of the Supreme Court of New Jersey entered on February 20, 1967 reversing an order of the Superior Court, Chancery Division, Mercer County, which invalidated as unconstitutional a provision of the New Jersey Professional Planners Licensing Act, L. 1962, c. 109, N.J.S.A. 45:14A-1, *et seq.*, the provisions of which are set forth in full in Appendix B to appellants' brief. Respondents contend that the federal question projected in appellants' brief is so completely lacking in substance and merit that the within appeal should be dismissed forthwith.

Question Presented

Where a State Legislature has determined that the professions of engineering, architecture and land surveying are closely related to and overlapping with the profession of professional planning and that possession of licenses in these related fields insures to the people of the State of New Jersey at least minimal competence in the practice of planning, may that State consistent with the equal protection and due process clause of the Fourteenth Amendment so provide, by stipulating that those who possess licenses in these related fields be automatically licensed as professional planners?

Statement of Facts

To avoid unnecessary length and useless repetition, respondents adopt the comprehensive description of the statutory scheme of regulating the field of professional planning contained in the decision of the Supreme Court of New Jersey reproduced in the Appendix to appellants' brief at page App. A, p. 27a. In the interests of clarity

in presentation, however, the challenged provision of that Act will be quoted in full:

> "The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect of New Jersey." (App. A, p. 31a)

Before isolating the readily definable issue presented to this Court, it is advisable to delineate those areas which are not subject to any dispute. First, appellants do not deny the power of the State to impose a system of regulation upon the practice of professional planning. Indeed, as the opinion of the Supreme Court sharply notes, the impetus for such derived not from the public at large but from the planners themselves. (App. A, p. 38a):

> "As was the case in . . ., the legislative history recounted above shows that the agitation for the legislation came, as so frequently happens, from those who described themselves as professional planners, and not because of any public demand. It seems fair to say also that their principal motivation was self-interest rather than public interest."

The reason underlying this motivation was given recognition by the Supreme Court of New Jersey when it accepted as uncontradicted that there exists at present a shortage of persons engaged in planning, whatever may be their professional qualifications. To fasten a monopolistic grip upon a profession whose members are too few to satisfy present needs can only redound to the financial benefit of those few practitioners at the public's expense.

On the other hand, the decision of the New Jersey Supreme Court recognizes minimal need for the regulation of this profession (App. A, pp. 38a-39a):

> "The argument has been advanced persuasively that there is no public need for the exercise of the regulatory police power in this occupational area. It is said that the governmental units (which are practically the only clients of the planners), unlike the ordinary member of the public, are sufficiently sophisticated to know the individuals and organizations that are competent or experienced in planning and redevelopment. Moreover, defendants point out that selection of planners has been made the subject of executive regulation at various levels of government, state and federal, which makes it extremely unlikely that an unqualified person representing himself as a planner would be employed . . ."

Thus it can be concluded, with much logic, that the Legislature of New Jersey was dealing with a profession, the practice of which was already subject to considerable regulation from government and that, therefore, stringent qualifications for entry therein were not only unnecessary but contraindicated by virtue of the insufficient number of practitioners meeting qualifications satisfactory to appellants.

Second, appellants themselves concede "that there is [illegible] between the profession of city planning and [illegible]" (p. 9). Indeed, appellants [illegible] of such interrelation with no [illegible] (p. 9). Appellants' argument offered in [illegible] additional, unconstitutionality concerns itself [illegible] the distinction between these "closely related" occupational areas rather than with their areas of identity.

In the context thus described—a fledging profession with numbers insufficient to satisfy public need already subject to government regulation which profession serves not individual and unsophisticated members of the public but local governmental entities—a discussion of the precise issue raised by appellant's brief can now be discussed.

Two constitutional transgressions are asserted—violation of the equal protection and due process clauses of the Fourteenth Amendment. Both, however, appear to stand on common ground and, therefore, can be largely discussed together. That common ground is the asserted lack of reasonable relation between the automatic licensing provision and the purpose of the legislation (p. 23) with the alleged result that many "unqualified" persons are permitted automatic entry into the planning profession while "qualified" planners must submit themselves to an examination in order to practice.

The vice in appellants' position as thus stated is manifest. Prior to the enactment of the Planners Licensing Law, anyone was permitted to offer his services as a planner. Passage of this Act excluded most of the patently unqualified from doing so presumably for the purpose of excluding those whose practice would endanger the public health, welfare and safety. In that respect the means employed by the Legislature clearly bear a valid relationship to the purpose for which the legislation was enacted—protection of the health, welfare and safety of the citizens of this State—and fall so clearly within prescribed constitutional limits as to deprive the federal question raised of any substance or merits whatever. The question of classification raised is not, it is submitted, even debatable.

"The assailed provisions, in this view, are not ends in and of themselves, but means to the legi-

timate end of conserving the highways. The extent to which, as means, they conduce to that end, the degree of their efficiency, the closeness of their relation to the end sought to be attained, are matters addressed to the judgment of the legislature, and not to that of the courts. It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end." *Stephenson v. Binford*, 287 U. S. 251, 77 L. Ed. 288 (1932).

The problem resulting in the present lawsuit, however, finds its genesis in the attempted imposition of standards for practice appellants find desirable in lieu of those standards the Legislature deemed sufficient to implement the statute's purpose in the context of New Jersey's demonstrated need for planners. The aim of appellants' organization and the interest of each individual planner is, of course, to promote the development of their profession by more stringent requirements to practice, more adequate educational facilities to train practitioners and other measures designed to enhance the results they try to achieve. Such is an entirely commendable interest and in keeping with a normally professional outlook. The Legislature's interest, however, is derived from different motivation. Its concern is not with the internal standards of excellence a professional organization desires to maintain but with protection of the public health, welfare and safety by forbidding the practice only to those who might endanger it. Briefly stated, appellants are interested in setting the highest possible standards while the Legislature's purpose is to set a standard consistent with the public welfare taking into account need for regulation, need for planners and the supply thereof as well as quality of expertise. Such

decisions lie peculiarly within the legislative realm, and courts are ill-equipped and normally disinclined to judge their wisdom.

It may well be that several specialities within the field of engineering have little concern with matters of planning. It has been noted that chemical, mechanical and ceramic engineers, among others, make little claim to expertise in planning. Such observation, however, indicates a basic misconception of the licensing machinery devised to regulate most of the major professions today. A ceramic engineer holds the same license as a civil engineer, and yet it is to be doubted whether each could trade their respective areas of specialization without losing much of their acquired competence. A competent radiologist would scarcely undertake delicate brain surgery, and yet both are licensed physicians. There are few negligence trial lawyers today who would feel at home drafting a trust indenture involving complex tax problems, and yet they are authorized to do so by law.

No doubt a legislature could fragment the various major professions and test the competence of their practitioners within more limited areas of specialization. The fact, however, that this has not been done does not render these licensing laws unconstitutional. In the present case, the statute under examination has given definition to the planning profession for the purposes of the scheme of regulation imposed thereby. As part of this profession, the Legislature included duly licensed engineers, architects and land surveyors. The fact that appellants do not agree with this statutory definition of the profession does not, however, render it unconstitutional.

It is indeed difficult to avoid venturing into arguments directed to the wisdom of the challenged legislation be-

[illegible] seemed to be the prime concern of the trial court. Perhaps this provision is not wise. Perhaps the State would be better off with all engineers excluded from licensed as planners. Perhaps not. Appellants are in no better a position to make such a determination than was the trial court below. Nor is the issue even relevant. As stated by the court in *Berner* v. *Union Twp.*, 55 N. J. Super. 523 (Law Div. 1959):

"It has been seen that the Courts will not pass judgment upon the wisdom of the legislature in enacting a law but will only ascertain if the legislature has kept within its power."

Thus, any quarrel with the wisdom of an item of legislation should be directed to the Legislature and not to the courts.

Appellants claim that the challenged provision denies them equal protection of the laws. How this alleged unequal treatment manifests itself is difficult to discern. Those [illegible] by a specific planning background to [illegible] as professional planners can scarcely complain [illegible] qualify, by virtue of their training [illegible] licensing provision. The training [illegible] under N.J.S.A. 45:14A-1, *et seq.*, [illegible] is no more arduous than that required [illegible] *et seq.* To those considering [illegible] several avenues of approach. They may decide to specialize [illegible] a broader approach [illegible] one

[illegible] is drawn [illegible]

narians, accountants, librarians, all of them members of licensed professions, were not included as part of the profession of planning as defined by the legislation. Rather, to vindicate interests of the public the Legislature apparently deemed vital, members of professions termed closely related to planning were included therein. Even appellants concede their interrelatedness in certain respects. That being so, appellants' assertion that inclusion of engineers, architects and land surveyors within the statutory definition of planners lacks rational connection to the purposes the Act was designed to serve is clearly without substance.

A finding of a legislature, in this case that members of the three related professions possess qualifications for planning sufficient for purposes of the public welfare, is presumed to have the support of facts known to it "unless facts judicially known or proved preclude that possibility." *Clark* v. *Paul Gray*, 306 U. S. 583, 59 S. Ct. 744, 83 L. Ed. 1001 (1939). Several possible facts and circumstances which may well have motivated the legislators to include the related professions within the statutory profession of planning have been already suggested in this brief. The decision of the New Jersey Supreme Court from which appeal is here being taken alludes to the uncontradicted evidence of such circumstances as explaining and clarifying the thinking of the legislators upon this subject (App. A, p. 48a):

> "... In this connection, however, the evidence is uncontradicted that at present there is a shortage of persons engaging in planning, whatever may be their professional, educational or experiential background. According to the Executive Director of the American Society of Planning Officials, the Society advertised about 1300 professional planning jobs dur-

ing 1965, and at the end of the year about 400 of them were open and unfilled. That number was higher than at the end of 1964, which in turn was higher than in 1963. It may well be that the Legislature felt the need could be alleviated by admitting to the practice of planning without examination those persons who had already qualified for licenses in the related professional fields of engineering, land surveying and architecture. Under all of the circumstances it cannot be said reasonably that planning did not have its gestative stirrings and its early and continued practice in the three exempted disciplines, particularly in engineering and architecture. Nor can it be said on the record before us that it was wholly arbitrary and without reasonable basis for the Legislature to regard licensed members of the three professions as possessing sufficient minimal qualifications for planning to warrant treatment as a distinct class and to grant them exemption from the licensing requirements of the professional planners act, if they wish to practice in that field. Cf. Watson v. Maryland, 218 U. S. 173, 54 L. ed. 987 (1910); Williamson v. Lee Optical of Okla., supra; McGaughton v. Johnson, supra; Sproles v. Binford, supra; Peet Stock Remedy Co. v. McMullen, 33 F. 2d 580 (8th Cir. 1929)."

In so finding, the Supreme Court of New Jersey accurately performed a purely judicial function, the nature of which has been carefully explored by the United States Supreme Court on many occasions:

"[I]t is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided.

Its function is only to determine whether it is possible to say that the legislative decision is without rational basis." *Clark v. Paul Gray, supra.*

The present legislation comes before the court favored with a strong presumption as to its constitutionality. Accordingly, it is to be assumed that the Act was directed to an exigency made manifest by experience and its remedy contained therein was adopted in accordance with the known need. *Ward & Gow* v. *Krinsky*, 259 U. S. 503, 42 S. Ct. 529, 66 L. Ed. 1033 (1922). Such assumption need not, however, be indulged in in the present case. Uncontradicted evidence introduced into the record by the appellants themselves amply discloses circumstances of public need which might well have motivated the New Jersey Legislature in shaping the challenged legislation to the form it finally took. Reference is, of course, made to the present shortage of planners in face of a growing need together with minimal need for regulation. At the very least, it cannot be said that appellants met this heavy burden of establishing facts which "preclude" the "possibility" that the challenged legislation enjoyed factual support.

It is for the foregoing reasons that respondents contend that no substantial federal question has been raised by the present appeal. Appellants clearly have suffered no unequal treatment before the law. They must demonstrate their qualifications to the Board created by this legislation as must those architects, engineers and land surveyors who seek licenses as planners. Training for these three related professions is certainly no less arduous and time consuming than the training which those who call themselves planners must demonstrate. Indeed, planners are free to pursue studies in architecture and engineering as an avenue

to licensing as planners. In no sense can the members of the three related professions, those presently training therefor or those who plan in the future to do so be regarded as "favored" although appellants persist in use of that characterization.

There exists, therefore, no basis for complaint by appellants. Quarrels concerning standards of qualification will always occur. The decision, however, as to whether such standards should be stringent, lax or somewhere in between is a matter for the Legislature and cannot be made in a vacuum or in terms absolute. It must be made in light of existing supply of the most qualified to fill existing and projected future needs, the necessity for regulation and the danger to the public welfare to be anticipated by unqualified persons offering their services to government as planners. The decision arrived at by the New Jersey Legislature is embodied in the challenged legislation and is so clearly within constitutional requirements as to deprive the "federal question" raised of any substance whatever.

CONCLUSION

For the foregoing reasons as well as those reasons given by the Supreme Court of New Jersey, it is respectfully submitted that the present appeal be dismissed.

Respectfully submitted,

PINDAR, MCELROY, CONNELL & FOLEY,
Attorneys for Respondents, Goodkind and Purcell,
By SONIA NAPOLITANO.

[redacted]

IN THE

Supreme Court of the United States

October Term, 1967

No. 575

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, ETC., et al.,

Appellants,

vs.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

[redacted]

MOTION TO [redacted] AND BRIEF IN SUPPORT THEREOF

[redacted]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 273

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, ETC., *et al.*,

Appellants,

vs.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, *et al.*,

Appellees.

Motion to Dismiss

Pursuant to Rule 16(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the State of New Jersey, and the New Jersey State Board of Professional Planners, moves to dismiss this appeal on the grounds that the questions presented are so unsubstantial as not to require further argument.

Opinion Below

The findings in the opinion of the Superior Court of New Jersey were not reported, but have been set forth in Jurisdictional Statement pages 1a to 24a. The opinion of the the Supreme Court of New Jersey and the dissenting opinion of Justice Hall are reported at 48 N. J. 581, 227 A. 2d 313 (1967).

Question Presented

Did the Supreme Court of New Jersey properly find that the legislative exemption from examination for planners licenses of a class of State licensed engineers, land surveyors and architects, reasonably comported with the objectives of the Professional Planners' Licensing Law, where it was shown that the Legislature had developed a broad definition for the practice of planning and that there existed a shortage of persons engaged therein?

Statement of the Case

A. The History of the Act.

An initial attempt by the State of New Jersey to regulate the practice of planning dates from February 17, 1958 when Assembly Bill No. 206 was introduced in the State Legislature. The purpose of the bill, as set forth in Section 1, was to promote the public health, safety and general welfare

> "... by establishing a measurement of qualifications for any person setting himself forth as a professional planner and providing for the registration of such a title ..."

and to

". . . provide the means of assuring that governmental units of the State of New Jersey can be afforded protection as to professional qualifications of persons engaged or employed by them in the preparation of general planning studies . . . ."

Assembly Bill No. 206 died in Committee.

In 1961 new pressure developed for a planners' control measure. Assembly Bill No. 483 was introduced on March 20, 1961. Attached to the Bill was a statement which read as follows:

"The purpose of this revision is to regulate the practice of professional planners by requiring their registration and licensing and providing penalties for the violation of this act in order to assure the municipal governments retaining professional planners of hiring personnel qualified to do the work requested of them.

This bill is endorsed by the New Jersey Society of Professional Engineers and the Municipal Engineers Association of New Jersey."

A month and a half later, on May 1, 1961, Assembly Bill No. 546 was introduced. The purpose of this competing bill, as evinced by its statement, was

". . . to regulate the practice of professional planning by establishing a State Board of Professional Planners, by requiring the registration and licensing of all professional planners by the board and by providing penalties for the violation of this act."

The statement thereafter recited:

"Planning is a distinct, separate profession, which requires specialized training. It is not a branch of

engineering, architecture, or any other profession. Thirty leading colleges and universities award degrees in planning, and more than 400 New Jersey municipalities and 15 counties have planning boards.

Each year brings a significant increase in the amount of planning activity and in the expenditure of public funds on planning in New Jersey. In recognition of the importance of guaranteeing the State's taxpayers that planning will be undertaken only by persons qualified by training and experience, the State Board of Professional Planners would be made up entirely of professional planners qualified under the standards established in this act.

In addition to providing for the licensing of persons specially trained in planning, provisions are made for the licensing as professional planners of persons with degrees in related fields and of persons in allied professions such as architecture and engineering. This bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.

The fees established in this act have been designed, after consultation with the staff of the Attorney General, to make the operations of the State Board of Professional Planners self-sustaining.

This bill is endorsed by the New Jersey Chapter of the American Institute of Planners."

Each of these bills, A 483, the engineer's version, and A 546, the planners' version, was ultimately recommitted on November 20, 1961 and did not again reach the floor of the Legislature.

Thereafter, on January 16, 1962 the engineers arranged the introduction of Assembly Bill No. 2. While no explanatory statement was annexed, the bill clearly sought to read into existing regulatory enactments concerning professional engineering and land surveying some recognition of planning as a professional concept. Thus, the title of Chapter 342 of the Laws of 1938 was sought to be amended to read as follows:

> "An act concerning the practice of professional engineering [and], land surveying *and professional planning* . . . ."

Once again the planners followed the engineers with their own bill after a lapse of several weeks. On January 29, 1962 Assembly Bill No. 166 was introduced, including verbatim the statement previously annexed to Assembly Bill No. 546 in 1961.

Both Assembly Bill No. 2 and Assembly Bill No. 166 were sent to the Highways, Transportation and Public Utilities Committees. Neither bill was reported out of Committee.

Slowly it became apparent that neither the American Institute of Planners nor the Society of Professional Engineers could succeed in having enacted its version of a bill regulating the practice of planning.

Assembly Bill No. 599 was introduced on March 26, 1962. The legislation was obviously a compromise between the competing factions. It passed both houses of the Legislature, with several Senate amendments, and was enacted into law on August 10 of that year as Chapter 109, Laws of 1962. The statement attached to Assembly Bill No. 599 read as follows:

> "The purpose of this bill is to regulate the practice of professional planning by establishing a State

Board of Professional Planners, by requiring the registration and licensing of all professional planners by the board, and by providing penalties for the violation of this act.

Planning is a profession, which requires specialized training.

Each year brings a significant increase in the amount of planning activity and in the expenditure of public funds on planning in New Jersey. In recognition of the importance of guaranteeing the State's taxpayers that planning will be undertaken only by persons qualified by training and experience, the State Board of Professional Planners would be made up entirely of professional planners qualified under the standards established in this act.

In addition to providing for the licensing of persons specially trained in planning, provisions are made for the licensing as professional planners of persons with degrees in related fields and all licensed professional engineers, land surveyors and registered architects of the State of New Jersey. This bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.

The fees established in this act have been designed, after consulation with the staff of the Attorney General, to make the operations of the State Board of Professional Planners self-sustaining."

In examining the legislative history of these bills, and particularly the introductions of 1962, the Supreme Court of New Jersey noted in its opinion in the instant matter:

"The statement apparently as amended by the Senate Committee, and attached to the compromise bill, contained some significant departures from the one on the original planners' bill. The paragraph quoted above was dropped and the following was substituted:

> 'Planning is a profession, which requires specialized training.'

Note that planning is no longer described as a 'separate and distinct' profession; further, that the description of planning as not being a 'branch of engineering, architecture or any other profession' is excised. Moreover, the statement contains a reference to the fact that special provisions are included for the licensing of persons with degrees 'in related fields' and for 'all licensed professional engineers, land surveyors and registered architects of the State of New Jersey.' And it says that the bill 'has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.' "

(Jurisdictional Statement pp. 34a-35a.)

B. Proceedings Below.

The litigation in the instant matter arose by way of declaratory judgment action brought by the New Jersey Chapter of the American Institute of Planners, challenging specifically the constitutionality of Section 3 and the fourth paragraph of Section 11 of Chapter 109 of the Laws of 1962, as set forth in N.J.S.A. 45:14A-1 *et seq.* Named as defendant was the New Jersey State Board of Professional Planners. Thereafter the New Jersey Society of Professional Engineers, the New Jersey Association of Consulting Engi-

neers and the New Jersey Society of Architects were permitted to intervene as defendants. The trial court upheld the constitutionality of Section 3 of the law, declared unconstitutional as violative of the equal protection and due process provisions of the 14th Amendment the fourth paragraph of Section 11, and further declared that paragraph 4, Section 11 was severable from the body of the law and could be excised therefrom.

An examination of the trial court's opinion (Jurisdictional Statement pp. 1a-24a) reveals a serious error which apparently developed through confusion over the several statutes introduced for legislative consideration prior to the passage of Assembly Bill No. 599. Much stress is placed by the trial court upon the "distinct" and "separate" nature of the practice of planning. Such emphasis is confusing in the light of the declaration found in the statement annexed to Assembly Bill No. 599. Its genesis becomes clear only on a careful persual of the opinion, which reveals that the wrong statement was relied on by the court.

The court says:

> "I believe the proof has been clearly established that professional or city planning is a separate and distinct profession and differs from that of professional engineering, architecture and land surveying. The very statement annexed to the bill in question, 'Planning is a distinct, separate profession, which requires specialized training. It is not a branch of engineering, architecture or any other profession.'" (Jurisdictional Statement p. 13a.)

The statement to which the trial court refers is in fact annexed to Assembly Bills No. 546 of 1961 and No. 166 of 1962. Both of these were sponsored by the American Institute of Planners but neither was enacted into law.

Commencing with this erroneous premise the trial court is able to adopt the "separate and distinct" concept and run its thread throughout the analysis.

Thus:

> "The fact that historically planning evolved from architecture and engineering is of little or no consequence. This may be an unfortunate fact, but it is now recognized that the profession of planning is a separate and distinct profession." (Jurisdictional Statement p. 15a.)

And also:

> "Going again to the primary purpose of the law, namely, to see that qualified persons undertake planning, and recognizing [sic] by the law that professional planning is a separate profession, it should necessarily follow that only persons educated and trained in professional planning be licensed." (Jurisdictional Statement p. 16a.)

Again, at page 16a of the Jurisdictional Statement:

> "While the professions admittedly overlap, complement or implement one another, we are here dealing with a legally recognized separate and distinct profession, and to permit unqualified persons, whether they be engineers, architects or land surveyors, to be licensed would in my opinion fall short of the legislative purpose."

Unhappily, a second major error has resulted from the trial court's reading of the wrong statement. In its initial reference to the statement the court notes:

> "I would, however, be remiss if I did not mention the fact that the statement also contains the following:

'Provisions are made for the licensing as professional planners of persons with degrees in related fields *and of persons in allied professions such as architecture and engineering.* The bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel.' " (Emphasis supplied) (Jurisdictional Statement p. 13a.)

The statement actually annexed to Chapter 109 of the Laws of 1962 is different in significant respect, for its adds an important new qualification. It declares:

"In addition to providing for the licensing of persons specially trained in planning, provisions are made for the licensing as professional planners of persons with degrees in related fields *and all licensed professional engineers, land surveyors and registered architects of the State of New Jersey.* This bill has been drawn for the primary purpose of protecting the great interests of New Jersey's citizens in competent planning by qualified personnel." (Emphasis supplied.)

On the basis of the errors above set forth, and upon consideration of oral testimony relating to factual distinctions between planning, engineering, land surveying and architecture, the trial court concerned itself with two prime considerations:

(a) The legislative import as garnered from an analysis of the statement; and

(b) the competence of engineers, land surveyors and architects to practice planning as a profession. The court concluded that:

> "The evidence does not bear out the fact that an engineer, architect or land surveyor by the education he has received and simply with the training in his respective field possesses the qualifications of a professional planner. Even this is admitted by some of the defendants' own witnesses." (Jurisdictional Statement p. 15a.)

and therefore (as previously noted):

> "While the professions admittedly overlap, complement or implement one another, we are here dealing with a legally recognized separate and distinct profession, and to permit unqualified persons, whether they be engineers, architects or land surveyors, to be licensed would in my opinion fall short of the legislative purpose." (Jurisdictional Statement p. 16a.)

An appeal was taken from the trial court's judgment to the Appellate Division of the Superior Court, whence it was certified to the New Jersey Supreme Court while pending unheard. After entry of judgment in the trial court, Donald R. Goodkind and Lee T. Purcell, licensed professional engineers, were granted leave to intervene as defendants so as to participate in the appeal.

C. The Decision of the New Jersey Supreme Court.

On appeal, the Supreme Court analyzed the statute and its history before turning to aspects of constitutionality. The differences between the Bill Statements noted previously were discussed (Jurisdictional Statement p 13a), and the planners' bill, A 546, was characterized as motivated by ". . . self-interest rather than public interest." (Jurisdictional Statement p. 38a.)

Once the incorrect historical recitation was brought to light, the Supreme Court was in a position to postulate

inferences of purpose derived from the proper historical pattern. By striking down the partisan and mechanistic approach of the Institute of Planners and looking at that aspect of the public interest sought to be reached by the Legislature, the Court found that classification was a response to the need for a measured, step by step approach to regulation of the practice of planning. On this basis the appellate tribunal reversed the judgment of the trial court, one Justice dissenting.

Summary of Argument

The criteria for determining the legitimacy of legislative classification are set forth in *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 489 (1955) and *Morey* v. *Doud*, 354 U. S. 457, 464 (1957). These cases note that if any state of facts reasonably can be conceived which will sustain the classification, the existence of those facts at the time of enactment must be presumed. In addition, the Legislature may proceed to meet a recognized evil on a step by step basis.

In the instant matter the New Jersey Legislature broadly defined the profession of planning and sought to enact reasonable standard regulatory or licensing measures. It exempted from the requirement of examination before licensing, a class consisting of engineers, land surveyors and architects already licensed by the State in each of the prescribed disciplines.

The Supreme Court of New Jersey held the classification to be proper. Evidence showed the existence of a shortage of persons engaged in planning. The Court postulated the intent of the Legislature to proceed with regulation step by step, acting in the initial phase to license without examination a class of persons who had already qualified for licenses in the related professional fields of engineering,

land surveying and architecture. In this way the Legislature felt the need for planners could be alleviated.

That the Legislative action did not go as far as it might does not invalidate the statute. *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 50 (1966). Nor is the wisdom of the legislative action a matter for judicial concern. *Sproles* v. *Binford*, 286 U. S. 374, 388-389 (1932).

Appellant argues for a restrictive statute which will show that planning is a "separate and distinct" profession, but this interpretation is based upon an incorrect reading of the legislative statement annexed to the law adopted. Also, appellant seeks to show that engineers, land surveyors and architects are not competent to perform as planners. This argument ignores the statutory limitation to a class of licensed persons, already pretested in their respective disciplines.

ARGUMENT

POINT I

The classification in issue reasonably comports with the purposes of the regulatory act, the Professional Planners' Licensing Law and its challenge does not raise a substantial or important federal constitutional question warranting review by this Court.

A. The Decision of the Supreme Court of New Jersey is Correct.

Basic to a determination of the legitimacy of legislative classification is the meeting of those criteria enunciated by this court in *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 489 (1955):

"The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. * * * Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. * * * The legislature may select one phase of one field and apply a remedy there, neglecting the others. * * * The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

Elaborating on these criteria this court said in *Morey* v. *Doud*, 354 U. S. 457, 464 (1957):

"A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. * * * When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. * * * One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

Legislative purpose, gathered from its pronouncements, is the polestar to be followed in determining the reasonableness of express classification. Examination of the history of Chapter 100, Laws of 1962 demonstrates a legislative purpose to establish control over those who would hold themselves out as planners. It does not reveal a desire to monopolistically professionalize the practice. The

Planners were alone in their expressed desire for distinctly and separately recognized professionalization. The contrary partisan viewpoint argued against any need for regulation of this occupational area, asserting that:

> ". . . the governmental units (which are practically the only clients of the planners), unlike the ordinary member of the public, are sufficiently sophisticated to know the individuals and organizations that are competent or experienced in planning and redevelopment. Moreover, . . . selection of planners has been made the subject of executive regulation at various levels of government, state and federal, which makes it extremely unlikely that an unqualified person representing himself as a planner would be employed." (Jurisdictional Statement p. 39a.)

After considerable reflection on these conflicting views the Legislature concluded that the public interest and welfare were involved in the creation of master plans in sufficient degree to warrant regulatory action by the State under its broad grants of police power.

The resulting law, Chapter 109, Laws of 1962, was the considered remedy for the problem, limited to the dimensions the evil assumed in the collective legislative mind. In its wisdom the Legislature sought:

> ". . . to enact reasonable standard regulatory or licensing measures to insure that all persons who offer their services for such planning purposes are *prima facie* qualified to perform them." (Jurisdictional Statement p. 40a.)

In so doing the Legislature declined the definition proposed by the American Institute of Planners which emphasized the "socio-economic" aspects of planning. Instead, the practice of planning was defined

> "... in general terms related for the most part to long standing statutes concerning activities involving fashioning of master plans for the orderly physical development of municipal, county and state units." (Jurisdictional Statement p. 43a.)

It was determined that consonant with the broad objectives of the law and the general definition of the practice of planning, an established class of persons would be exempted from meeting the enumerated qualifications of the law. By Section 11, paragraph 4, "... any duly *licensed* professional engineer, *licensed* land surveyor or *registered* architect of New Jersey ..." could obtain authority to hold himself out as a planner upon application and without more.

It must be emphasized that not all engineers, land surveyors and architects are included.

> "The exemption covers only those who meet the qualifications, pass the examination and obtain the license required by the statute regulating admission to practice his particular profession. ..." (Jurisdictional Statement p. 43a.)

Reading from this foundation and the statement accompanying the law, the New Jersey Supreme Court concluded:

> "It is obvious from the professional planners act now before us that the Legislature considered engineering, architecture, and land surveying as sciences which are closely related to planning, and that those who become licensed in the former ought to be considered *prima facie* competent to pursue the latter." (Jurisdictional Statement pp. 43a-44a.)

The question before this Court, as it has been the question before the trial court and the New Jersey Supreme Court, is whether:

> ". . . the Legislature, in responding to what it conceived to be living facts calling for regulation, did not disregard reason in drawing its lines." (Jurisdictional Statement p. 42a.)

To repeat the language of *Morey* v. *Doud*:

> ". . . if any state of facts reasonably can be conceived that would sustain it [the classification], the existence of that state of facts at the time the law was enacted must be assumed." 354 U. S. 457, 464 (1957).

Speaking to this question the New Jersey Supreme Court found:

> ". . . the evidence is uncontradicted that at present there is a shortage of persons engaging in planning, whatever may be their professional, educational or experiential background. According to the Executive Director of the American Society of Planning Officials, the Society advertised about 1300 professional planning jobs during 1965, and at the end of the year about 400 of them were open and unfilled. That number was higher than at the end of 1964, which in turn was higher than in 1963. It may well be that the Legislature felt the need could be alleviated by admitting to the practice of planning without examination those persons who had already qualified for licenses in the related professional fields of engineering, land surveying and architecture. * * * Nor can it be said on the record before us that it was wholly arbitrary and without reasonable basis for the Legislature to regard licensed members of the three professions as possessing sufficient minimal qualifications for planning to warrant treatment as a distinct class and to grant them exemption from

the licensing requirements of the professional planners act, if they wish to practice in that field.

* * *

All of these circumstances suggest the view that the Legislature felt the current need in the field of community planning was for regulation of those persons who wished to engage in the practice but who had not demonstrated to any public agency that they had sufficient qualifications to do so. The circumstances suggest also satisfaction on the part of the lawmakers that achievement of licensure in one of the three named professions demonstrates possession of sufficient minimal competence to engage in planning to warrant treating such license holders as a separate class and exempting them from the requirements imposed upon those who have no license of any kind to practice planning." (Jurisdictional Statement pp. 48a-50a.)

Undoubtedly referring to the "step by step" approach permissible in regulatory legislation the Court commented:

"And it may be that in the course of time the Legislature will conclude that such a high degree of specialized expertise has come into being in planning that the practice ought to be treated as uniquely separate from and independent of all other professional disciplines. In this event, in its wisdom the Legislature may withdraw thereafter the grant of automatic licensure as professional planners from licensed engineers, land surveyors and registered architects." (Jurisdictional Statement p. 48a.)

The use of language of possibility does not serve to lessen the force of the inferred legislative rationale. In *Watson* v.

Maryland, delineating a constitutional basis for classification, this Court said:

> "We cannot say that these exceptions [to the regulatory provisions of the law] nullify the law. The reason for them may be that hospitals are very often the subject of state or municipal regulation and control, and employment in them may be by boards responsible to public authority under state law or municipal ordinance." 218 U. S. 173, 177 (1910).

And in *Williamson* v. *Lee Optical of Okla.*, in upholding the classification:

> "For all this record shows, the ready-to-wear branch of this business may not loom large in Oklahoma or may present problems of regulation distinct from the other branch." 348 U. S. 483, 489 (1955).

Nor is it of consequence that the results of the Legislature's action may not completely secure the professional standards sought by the Planners.

> "A statute is not invalid under the Constitution because it might have gone farther than it did, or because it may not succeed in bringing about the result that it tends to produce." *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U. S. 35, 50 (1966).

The Legislature of New Jersey has spoken to a problem of moment. Its response has been that which it deems proper and sufficient. Its reasons, inferable from its actions, are far from arbitrary. The wisdom of its action is not a matter for judicial consideration, for:

> "When the subject lies within the police power of the State, debatable questions as to reasonableness are

not for the courts but for the legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome." *Sproles* v. *Binford*, 286 U. S. 374, 388-389 (1932).

The legislative solution comports with both the declared and ascertainable purposes of the law, and with the criteria for constitutionality established by this Court.

B. Appellant's Challenge to the Classification is Based Upon a Faulty Reading of the Statute.

Appellant argues that the question here presented is of such substantial import by way of precedent that the inclusion without examination of licensed engineers, licensed land surveyors and registered architects must be rejected. It maintains that ". . . this exemption for a favored class bears no reasonable relation to the purpose of the legislation . . . ." (Jurisdictional Statement p. 23.) Planning, it says, is legislatively declared to be a "separate and distinct" profession on the face of the statute, and cannot be held automatically to include as qualified, licensed engineers, licensed land surveyors and registered architects. As stated in its brief:

> ". . . the test in the instant case is whether there is a reasonable ground for assuming that those architects, engineers and surveyors entitled by statute to planning licenses are qualified to practice planning." (Jurisdictional Statement p. 35.)

Appellant thus interjects its assertion that there exist substantial differences between the qualifications of a planner and the qualifications of a licensed engineer, a licensed land surveyor and a registered architect, and that these differ-

ences preclude any legislative action which serves to dilute the distinction and turn the licensing procedure solely upon qualification in another discipline. Appellant's argument is bottomed in the history and language of the act as read by it, and in the testimony intended to dramatize the alleged distinction, produced by it at the trial court hearing.

Were it accurate in its historical recitation appellant might argue as it has chosen to do. A legislative declaration of the separateness and distinctiveness of the practice of planning, coupled with the further statement that planing is not a subgroup of engineering, architecture and land surveying could be read restrictively. Such a reading would be less apt to give rise to the classification adopted by the Legislature and approved by the New Jersey Supreme Court. While not precluding the classification adopted, incorporation of the engineers, land surveyors and architects without examination would be more difficult to understand.

To make its point, appellant has embraced the error of the trial court in relying upon the wrong statement, and has developed its own legislative history. Appellant's brief is replete with references to findings of both the trial court and the Legislature to the effect that planning is a distinct and separate profession. For example, the Question Presented in the brief refers to a factual determination of the Legislature that the profession of city planning requires "distinct" skills and that the State has chosen to grant "... automatic licenses, without examination, to members of separate and distinct professions. . . ." (Jurisdictional Statement pp. 2-3.) Further, at page 10 appellant declares:

> "... both the Legislature of New Jersey and the trier of the facts below concluded . . . that planning is . . . a completely separate and distinct profession from the other three [engineering, land surveying and architecture]". (Jurisdictional Statement p. 10.)

The analysis on pages 12 and 13 is also the product of this basic error:

> "The legislative recognition of the separateness of planning and engineering is also embedded in the Professional Planners Licensing Act. To begin with, Section 2 of the Act explicitly provides as follows:
>
> > 'The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey'."

The section cited does not demonstrate a legislative acceptance of the "separateness" of the professions mentioned. It merely points out that the Legislature does not consider a planner qualified to perform the work of an attorney at law, a licensed engineer, land surveyor or a registered architect. The work that a planner may do in these related fields is limited to something less than that which may be performed by State qualified personnel. Continuing its insistence upon adherence to the trial court's erroneous conclusions, appellant states:

> "On the basis of such undisputed evidence the trial court found—*again without contradiction by the Supreme Court of New Jersey*—that 'professional city planning is a separate and distinct profession and differs from that of . . . architects . . .' (App. A, p. 13a)". (Emphasis supplied.) (Jurisdictional Statement pp. 18-19.)

And on page 20:

> "Both the Legislature and the trial court made the usual findings that land surveying is a profession which is separate and distinct from city planning

and which involves entirely different skills (see pp. 13-14 *supra*.)" (Jurisdictional Statement p. 20.)

On page 24:

> "This case is unusual in several respects. First, because the State Legislature itself determined the existence of clear distinctions between the different classes of citizens involved, the invidious discrimination brought about by the statute appears on the face of the legislation itself." (Jurisdictional Statement p. 24.)

On page 32, appellant again refers to the "statutory scheme" and inexplicably comments on the lack of New Jersey Supreme Court consideration:

> "The Supreme Court of New Jersey, however, took a far more casual approach. It paid no attention to the statutory scheme which so clearly recognizes the distinctions between the several professions . . .." (Jurisdictional Statement p. 32.)

The foregoing recitation, clearly demonstrating appellant's reliance on the trial court's error, taints the argument presented. It is difficult to understand appellant's persistence in this error in the face of its explicit repudiation by the New Jersey Supreme Court. (Jurisdictional Statement pp. 34a-36a.)

Obviously if one refers back to the partisan bill introduced by the American Institute of Planners in its "self interest" it is possible to "boot strap" an argument based upon statutory and testimonial distinctions between the professions.

In addition to the foregoing, appellant argues that extended experience in the practice of professional planning is the only real qualification both logically and legislatively recognized as reflecting competence in planning.

> ". . . Section 9 of the Act provides, as a special dispensation, that for a period of eight years from enactment of the Act a person who holds a degree in engineering or architecture (or in one of eight other specified fields) may qualify for a professional planner's license if he has also had specified academic training in planning and 'a minimum of five years' experience in the full-time practice of professional planning' (N.J.S.A. 45:14A-9). Here is clear recognition that neither engineering competence nor architectural competence is planning competence; if an applicant's only skills lie in the field of engineering or architecture, he must acquire planning skills as well before he is qualified even to take the planning examination for a professional planner's license. And yet under Section 11 of the same statute a person who has only engineering skills (or architectural skills or land surveying skills) is not only automatically qualified for a license but can get one without taking any examination in the planning discipline." (Jurisdictional Statement pp. 27,28.)

For a brief instant the argument sounds plausible, until we realize it ignores that part of the legislative scheme which recognizes licensure in the related discipline as adequate qualification for a planning license. Section 11, paragraph 4 admits without examination only *licensed* engineers, *licensed* land surveyors and *registered* architects. The Legislature has decided that only the State, acting by examination, may determine whether an applicant for license meets prescribed qualification standards.[1] In its

[1] The one exception to this may be found in Section 11, paragraph 3 of Chapter 109, Laws of 1962. This provides that an applicant holding a planner's license from any State may be admitted in New Jersey without examination when the applicant's qualifications meet the requirements of the act.

wisdom, the Legislature also has indicated its acceptance of licensed engineers, licensed land surveyors and registered architects as competent to hold themselves out as planners on the basis of qualifying examinations taken for licensure in each of these disciplines. No conflict exists between the statute and legislatively recognized competence. The measuring criteria is that of State approved qualification by examination. Those who have not proved to the satisfaction of the State that they are properly qualified must be examined.

The daylight of verified statutory development reveals the *reductio ad absurdum* offered by appellant at pp. 29 and 30 of the Jurisdictional Statement as a manifest obliquity.

Throughout its brief appellant has failed to recognize a simple truth. What is in issue is not the relative competency of planners, engineers, land surveyors and architects, but the right of any of the members of these disciplines to be statutorily designated as planners. The concern of the courts must be focused on the right and power of the New Jersey Legislature to determine for itself the scope of the State's regulation of the practice of planning, and to act within that declared scope to meet and overcome in a practical manner the problems which engendered the legislation here challenged.

CONCLUSION

The New Jersey Supreme Court has determined that the existence of a class of State qualified licensees in other disciplines together with the shortage of persons specifically trained as planners warranted a legislative classification permitting those whose qualifications have been pretested by the State to meet the need for trained personnel. In so holding the Court has properly declined comment on the wisdom of the legislative act. Appellant has raised no substantial or important federal constitutional question which warrants the further attention of this Court and, therefore, it is respectfully urged that the instant appeal be dismissed.

Respectfully submitted,

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No. 273

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, ETC., ET AL., *Appellants*

v.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, ET AL., *Appellees*

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

APPELLANTS' BRIEF IN OPPOSITION TO MOTIONS TO DISMISS

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In response to the Jurisdictional Statement, two motions to dismiss have now been filed, both contending that this case does not involve a substantial Federal question. The gist of both motions is that the New Jersey Professional Planners Licensing Act is not irra-

tional on its face, that the statute must therefore be presumed to be consistent with the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and that that is the end of the matter.

Both motions, however, suffer from a common defect—namely, that they totally fail to take into account the fact that in the state courts below there was a full trial on the merits at which a long line of witnesses testified, many documents were offered and received, and the trial judge made extensive findings of fact. Neither of the two motions makes any mention of the trial, the evidence, or the findings based upon that evidence. They discuss one technical (and immaterial) error made by the trial court,[1] and they engage in extensive speculation (without record support) as to what the New Jersey Legislature may have had in mind in writing the statute, but neither motion comes to grips with, or even mentions, the facts established at trial.

The result is that the two motions have simply missed the basic point involved in this appeal. The fundamental position taken in both motions is that the classifications made by the statute as among the various professions must be presumed to be factually rational "unless facts judicially known or proved preclude

[1] The motion filed by the Attorney General of New Jersey makes much of the fact that the trial judge referred in passing to a "statement annexed to the bill" which ultimately became law. Apparently the statement involved, which was not offered in evidence or discussed at the trial, was in fact not annexed to the bill in question. This single factual error, however, does not affect the overall findings of fact. Those findings were based upon hundreds of pages of testimony and voluminous documentary materials, the bulk of which are summarized in the trial court's extensive analysis of the evidence. See Jurisdictional Statement, pp. 4a-11a.

that possibility"[1] and that in the courts below appellants had "the burden of showing that [the statutory classification] does not rest upon any reasonable basis but is essentially arbitrary."[2] All of this is true—but one of the basic reasons why appellants seek review by this Court is precisely that in this case appellants *did* prove, and conclusively so, that the statutory classification is irrational and arbitrary. In this respect, therefore, the two motions entirely miss the point at issue.

To put the matter in concrete terms, although the New Jersey Legislature clearly recognized the distinction between the skills of the professional planner and the skills of engineers, architects, and land surveyors,[3] it nevertheless treated licensed engineers, architects, and land surveyors as though, by reason of such licenses, they *ipso facto* possess the requisite skills to engage in professional planning. Perhaps such legislative treatment is not irrational on its face, and if there had been no trial in the state courts below, perhaps these statutory classifications could be presumed to be rational so as to survive constitutional attack. But a full trial was held in the state courts below, and appellants proved (in the trial court's phrase) by "overwhelming" evidence that licensed engineers,

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[1] Motion of Respondents Goodkind and Purcell, p. 9, quoting Clark v. Paul Gray, 306 U.S. 583, 594 (1939).

[2] Motion of the Attorney General of New Jersey, p. 14, quoting Morey v. Doud, 354 U.S. 457, 464 (1957).

[3] The contrary position of the Attorney General of New Jersey notwithstanding, the legislative recognition of the distinct and separate character of the planning profession, as compared with the three "preferred" professions, is clearly reflected in several sections of the New Jersey licensing statutes. See Jurisdictional Statement, pp. 11-13, 17-18, 27-28.

architects and land surveyors do not *ipso facto* have any competence in the planning field.[1] In short, whatever might be one's impression in the absence of proof, the evidence shows that the classification made by the Legislature is without rational basis and hence necessarily involves an invidious and unconstitutional discrimination.

Once the foregoing state of the record is recognized, it becomes apparent that many of the moving parties' comments upon the statutory scheme are matters of purely personal opinion and completely beside the point. For example, one of the motions emphasizes that the New Jersey Legislature drew distinctions between the various "licensed professions", granting automatic planners licenses to licensed members of the engineering, architectural, and land surveying professions, but denying such preferred treatment to such licensed professions as "[v]eterinarians, accountants, [and] librarians"—with the alleged purpose and effect (which are said to appear on the face of the statute without reference to the record) of excluding from the planning profession "those who might endanger it".[2] Having conjured up this legislative intent, the moving parties then express their personal view that this legislative scheme is rational and hence so clearly constitutional as to raise no substantial Federal question.

All of these observations are premised, however, not upon *fact*, but upon the moving parties' personal impressions as to the legislative thinking and as to the relationships between the skills of engineers, architects, land surveyors, veterinarians, accountants, librarians,

[1] Jurisdictional Statement, p. 15a.

[2] Motion of Respondents Goodkind and Purcell, pp. 6, 8-9.

professional planners, etc. Thus it is apparently the moving parties' impression that there is less "danger" in allowing licensed land surveyors generally to prepare master plans than in allowing licensed accountants to do so. Of course there is absolutely nothing in the record, and probably little if anything in ordinary human experience, to support any such speculative comparison. On the other hand, for present purposes it really doesn't matter, because the record is very clear as to the qualifications of land surveyors generally in the city planning field: the evidence is "overwhelming" that a land surveyor's license does not by itself reflect any degree of competence in the preparation of master plans (see, *e.g.*, R. 75a-76a, 305a, 381a, 453a). And yet under the challenged statutory scheme, it will be recalled, a so-called land surveyor who has never been to school, and who has never taken any examination in *any* subject, but who has spent some time sighting through a transit on construction jobs, may obtain a land surveyor's license and therefore an automatic license as a professional city planner[1]—while a professional city planner with a Ph.D. in city planning and many years of professional city planning experience

[1] See Jurisdictional Statement, pp. 20, 29-30. The fact that persons can become members of the three preferred classes (licensed engineers, architects, and land surveyors) without having taken any professional examinations lays to rest the argument advanced in the motion of the Attorney General of New Jersey (at pp. 24-25) to the effect that the statute is rational because all members of the preferred classes have demonstrated their professional competence through "qualifying examinations taken for licensure in each of these disciplines". Even if the taking of an examination in (for example) land surveying could be regarded as a rational basis for licensure as a professional city planner, it is in any event *not* true that all members of the preferred classes have necessarily taken professional examinations in their own particular fields.

is denied the same privilege. If that discrimination does not constitute, on its face, a clear denial of the equal protection of the laws, as appellants submit, nevertheless it surely raises a sufficiently substantial question to call for a plenary hearing in this Court.

CONCLUSION

In essence the record in this case shows that a State Legislature has given automatic professional licensing privileges to a class of persons who, according to the "overwhelming" evidence, do not generally possess any professional competence in the particular field involved, while at the same time denying the same privileges to persons who do possess professional competence in the field. Such an invidious discrimination clearly raises a substantial question of Federal constitutionality under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

Respectfully submitted,

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No. 273. Decided October 9, 1967.

PER CURIAM.

The motions to dismiss are granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.